

(21,145.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 145.

WILLIAM W. STEWART, APPELLANT,

v.

LEWIS A. GRIFFITH, EXECUTOR OF ALFRED W. BALL,  
DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF  
COLUMBIA.

INDEX.

	Page.
Caption .....	1
Transcript from the supreme court of the District of Columbia.....	1
Caption .....	1
Bill of complaint.....	1
Complainant's Exhibit A <sup>1</sup> —Power of attorney.....	9
A <sup>1</sup> —Agreement of sale .....	10
A <sup>1</sup> —Will of Alfred W. Ball and probate....	13
A <sup>1</sup> —Order of court.....	15
A <sup>2</sup> —Abstract of title .....	17
A <sup>3</sup> —Deed.....	25
A <sup>4</sup> —Abstract of title .....	29
A <sup>5</sup> —Affidavits as to death of Elinor Ball....	29
A <sup>6</sup> —Mortgage.....	30
Demurrer.....	34
Order overruling demurrer.....	35
Opinion of Justice Anderson.....	35
Answer.....	39
Replication.....	44

	Page.
Transcript of evidence.....	44
Stipulation as to testimony.....	44
Testimony of Dr. Lewis A. Griffith.....	45
Testimony of Joseph K. Roberts.....	60
Affidavits of S. J. Fowler and J. T. B. Smith.....	64
Testimony of William E. Ambrose.....	65
Columbus Pumphrey.....	67
Samuel J. Fowler.....	66
J. Alfred Ridgely.....	70
William E. Ambrose (recalled).....	74
Dr. Griffith (recalled for plaintiff).....	75
William J. Latimer.....	75
Ratification signed by Alfred W. Ball.....	80
Testimony of William E. Ambrose (recalled).....	80
R. E. Latimer.....	80
W. J. Latimer, Jr.....	82
Vincent Richardson.....	83
George R. Leapley.....	87
A. W. Thomas.....	104
Dr. William W. Stewart.....	150
Argument by counsel.....	150
Defendant's Exhibits W. W. S. Nos. 6 and 7—Letter, Griffith to Stewart, and envelope.....	156
Defendant's Exhibit W. W. S. No. 8—Postal card to Dr. Stewart.....	156
Defendant's Exhibits W. W. S. Nos. 9 and 10—Letter, Griffith to Stewart, September 12, 1903, and envelope.....	157
Defendant's Exhibit No. 11—Letter, Griffith to Stewart, November 5, 1905.....	158
Defendant's Exhibit W. W. S. No. 12—Letter, Griffith to Stewart, November 5, 1903.....	158
Defendant's Exhibits Nos. 13 and 14—Letter, Griffith to Stewart, November 7, 1903, and envelope.....	158
Defendant's Exhibit W. W. S. No. 15—Letter, Stewart to Griffith.....	159
Defendant's Exhibit W. W. S. No. 16—Letter, Griffith to Stewart, November 10, 1903.....	162
Defendant's Exhibit W. W. S. No. 17—Letter, Stewart to Griffith, November 23, 1903.....	164
Defendant's Exhibit W. W. S. No. 18—Letter, Griffith to Stewart, November 24, 1903.....	164
Testimony of William W. Stewart.....	170
Defendant's Exhibit W. W. S. No. 19—Letter, Waters to Griffith, December 20, 1904.....	199
Testimony of Frederick Briggs.....	206
George K. Flynn.....	211
Elisha B. Ferguson.....	213
James Herrison.....	217
James A. Branson.....	217
Rene C. Baughman.....	219
Richard A. Rawlings.....	226
C. W. Mark.....	227
Scott Armstrong.....	229
George B. Merrick.....	230
Charles A. Duvall.....	230



# INDEX.

## III

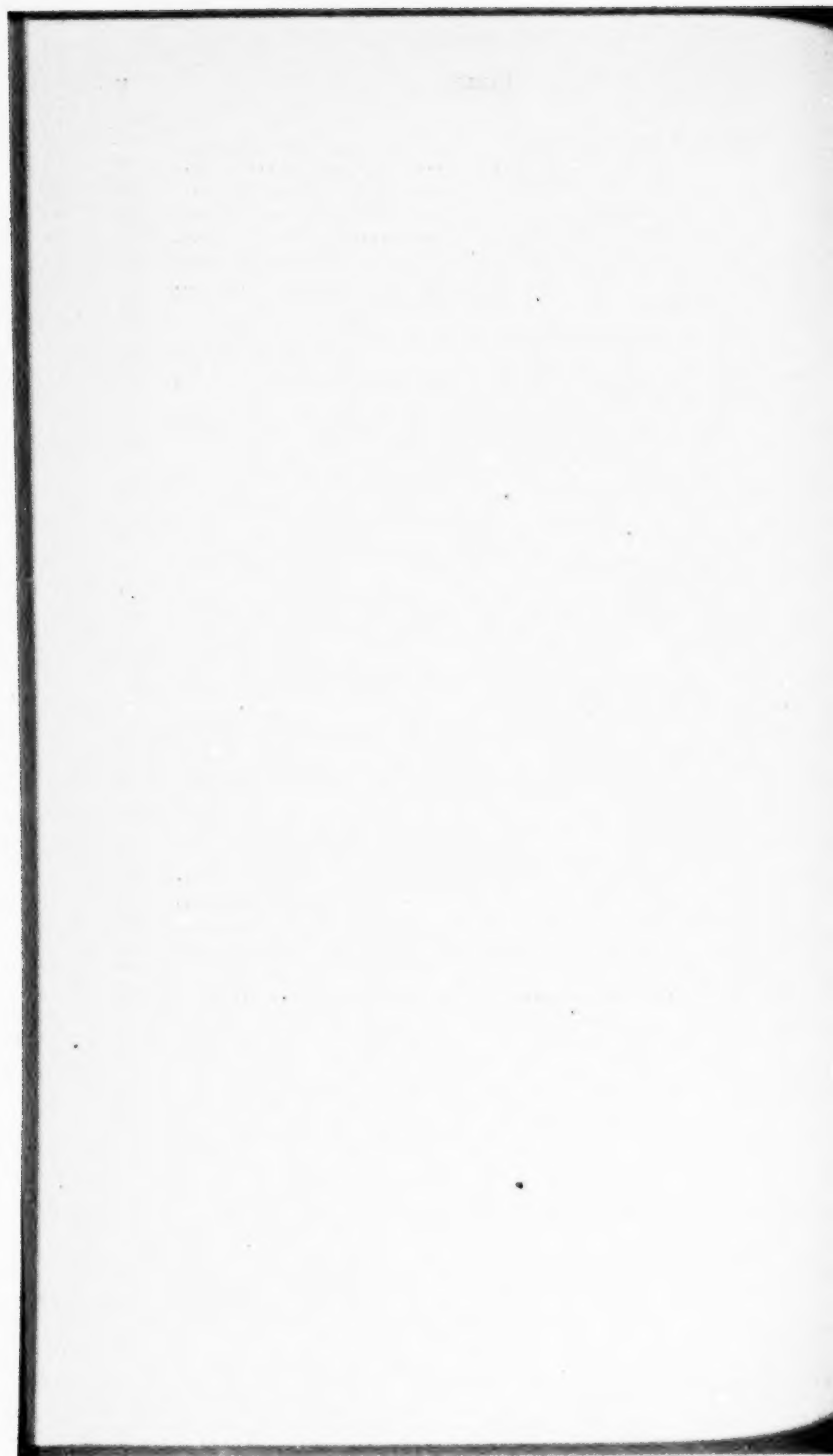
	Page.
Testimony of B. F. Duvall .....	231
Dr. L. A. Griffith (recalled).....	232
Dr. L. A. Griffith (recalled).....	234
Joseph K. Roberts (recalled).....	241
W. Earl Ambrose (recalled).....	247
John W. Lynn .....	247
Jos. E. Falk.....	248
Andrew Loffler .....	248
Everett E. Pumphrey.....	249
Enos F. Pumphrey .....	251
Anna I. Meloy .....	253
George S. Harrison .....	253
Richard W. Hereford.....	253
George S. Harrison (recalled).....	254
Richard Hereford (recalled).....	254
Charles H. Merillat.....	254
Dr. Griffith (recalled).....	254
Joseph K. Roberts (recalled).....	254
Vincent Richardson (recalled).....	255
William R. Smith .....	255
Susanna Mayhew.....	255
William J. Kinsley.....	255
Edward M. Schaefer.....	263
Edwin B. Hay.....	268
Philip F. Happ.....	270
David N. Carvalho.....	272
George W. Waters, Jr.....	278
W. Howard Gibson.....	280
Willey O. Ison .....	283
John T. Fisher .....	285
C. W. Clagett.....	285
C. A. M. Wells .....	286
C. A. Wells.....	286
Buchanan Beale .....	286
C. W. Darr.....	287
Richard N. Ryan.....	287
Jno. B. Ball.....	287
Jno. P. Hawkins .....	287
Henry Payne.....	289
Benjamin J. W. Swayne.....	290
Samuel J. Fowler.....	291
Richard J. Swann.....	291
Francis E. McMannus.....	292
Geo. W. Richardson.....	292
Richard W. Hereford.....	293
Allen Bowie.....	293
W. R. Smith.....	293
J. Alfred Ridgely.....	295
Joseph K. Roberts.....	299
Irving Owens.....	299
William S. Hill.....	300
Thomas Van Clagett.....	301
John H. Traban.....	303

	Page
Testimony of Augustin T. Brook	304
Richard S. Hill	304
Dr. Griffith (recalled)	305
W. R. Smith (recalled)	307
Joseph K. Roberts (recalled)	307
Judge George Merrick	308
Father Schwoollenburg	308
Hampton Magruder	308
Complainant's Exhibit B, also marked Complainant's Exhibit 10— Agreement	308
Defendant's Exhibit W. W. S. No. 5, offered as Complainant's Ex- hibit No. A <sup>11</sup> —Agreement	308
Complainant's Exhibit E, also marked 12—Ratification of sale	311
Exhibit A <sup>13</sup> —Will of Henry J. Bail and probate	311
Complainant's Exhibit A <sup>14</sup> —Abstract of title	314
Complainant's Exhibit A <sup>15</sup> —Letter, A. W. Thomas to W. E. Am- brose	315
Complainant's Exhibit A <sup>16</sup> —Agreement	321
Memorandum as to Complainant's Exhibit A <sup>17</sup>	324
Complainant's Exhibit A <sup>18</sup> —Certificate as to justice of peace	324
Memorandum as to Exhibit W. W. S. No. 19	324
Exhibit W. W. S. No. 20, offered by complainant's counsel in de- fendant's testimony—Agreement of sale	324
Defendant's Exhibit "A. W. T. No. 4," previously marked "E. L. W."—Agreement of sale	324
Decree for specific performance	324
Order for appearance	33
Deed in fee	33
Mortgage	33
Three-year note attached to mortgage	33
Four-year note attached to mortgage	34
Five-year note attached to mortgage	34
Supplemental decree	34
Motion to vacate decree and for new trial and rehearing	34
Petition and affidavits for rehearing	34
Affidavit of Edward M. Schaeffer	34
Affidavit of Edwin B. Hay	35
Affidavits in opposition to motion for new trial	35
Affidavit of Wm. S. Hill	35
A. T. Brooke	35
William R. Smith	35
J. Alfred Ridgely	35
William K. Smith	35
Charles H. Merillat	35
William E. Ambrose	35
Edwin L. Wilson	35
Lewis A. Griffith	35
F. A. Tschiffely	36
Further affidavit of Lewis A. Griffith	36
Affidavit of Charles A. Wells	36
Frank A. Schawallenberg	36
Francis E. McManus	36
Charles I. Wilson	36

# INDEX.

v

	Page.
Affidavit of Frederick Sasscer.....	365
Richard N. Ryon.....	366
R. Irving Bowie.....	366
Charles W. Darr.....	366
Charles F. Santag.....	367
Decree vacating decrees and for rehearing.....	367
<i>Subpoena duces tecum</i> .....	368
Marshal's return.....	368
Final decree.....	368
Appeal.....	368
Order extending time to file transcript.....	369
Memorandum: Appeal bond filed.....	369
Order further extending time to file transcript.....	369
Motion to further extend time for filing transcript.....	370
Order further extending time to file transcript.....	370
Order further extending time to file transcript.....	371
Order further extending time to file transcript.....	371
Order further extending time to file transcript.....	372
Order further extending time to file transcript.....	372
Stipulation of counsel as to exhibits.....	373
Order further extending time to file transcript.....	373
Directions to clerk for preparation of transcript of record.....	374
Clerk's certificate.....	375
Addition to transcript from supreme court of the District of Columbia.....	376
Stipulation for addition to record.....	376
Testimony of J. Alfred Ridgeley.....	377
Affidavit of Willey O. Ison.....	393
Second addition to transcript from supreme court of the district of Columbia.....	396
Stipulation for addition to record.....	396
Map of survey.....	398
Minute entry of argument.....	399
Opinion.....	399
Decree.....	408
Order allowing appeal.....	409
Bond on appeal.....	409
Citation and service.....	410
Clerk's certificate.....	411



# In the Court of Appeals of the District of Columbia.

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No. 1744.

LEWIS A. GRIFFITH, Executor, Appellant,  
*vs.*  
WILLIAM W. STEWART.

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Supreme Court of the District of Columbia.

In Equity. No. 24484.

LEWIS A. GRIFFITH, Complainant,  
*vs.*  
WILLIAM W. STEWART, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill.*

Filed February 15, 1904.

In the Supreme Court of the District of Columbia, Sitting in Equity.

In Equity. No. 24484.

LEWIS A. GRIFFITH, Complainant,  
*vs.*  
WILLIAM W. STEWART, Defendant.

To the Honorable Justice of the Supreme Court of the District of Columbia, holding a term for equity business:

The complainant respectfully shows to the Court:

First. That the complainant is a citizen of the United States and brings this suit as Executor of the Estate of Alfred W. Ball, deceased, late of Prince George's County, in the State of Maryland.

Second. That the defendant is a citizen of the United States, and a resident of the District of Columbia; and is sued in his own right.

Third. That on the 4th and also on the fifth day of June, 1903, Alfred W. Ball, aforesaid, was residing on and was seized in fee simple as of his own sole and separate estate and free and clear of all liens and incumbrances of every kind and nature of a certain tract of land near Meadows Post Office, Prince George's County, Maryland, containing two hundred and forty acres, more or less,

known as part of a tract of land called "Crotch Hall," the said tract comprising besides 239 other acres of ground, more or less (and since as hereinafter stated found by survey actually to contain  $288\frac{3}{4}$  acres) a plot of ground of one acre more or less, used as the burial ground of the Ball family, and said tract of land of 240 acres, more or less, being the same land, excepting however about six acres of land conveyed by said Alfred W. Ball prior to the making by complainant of the contract of sale with defendant hereafter referred to and after the hereafter mentioned devise from his father Henry W. Ball, to certain parties as shown by the land records of Prince George's County, Maryland, devised to Alfred W. Ball aforesaid, by the last will and testament of his father Henry Jackson Ball, dated October 1st, 1895, recorded in the office of the Register of Wills of Prince George's County, Maryland, in Liber W. A. J. Jr. #1, folio 117, *et seq.*

Fourth. That on June 4th, 1903, Alfred W. Ball aforesaid, being desirous of selling said tract of land of 240 acres, more or less, mentioned in paragraph three of complainant's bill of complaint, and William M. Stewart desiring to purchase the same, and the same then having a value and an immediate salable quality based on the supposed existence of mineral oil on or about or under said tract of land, said Alfred W. Ball entered into an agreement with complainant whereby for the sum of one dollar and certain other valuable considerations he, the said Alfred W. Ball, appointed and constituted complainant his agent and attorney to negotiate and sell, excepting the burial lot of one acre more or less referred to in paragraph 3 of complainant's bill of complaint, and said burial

lot of said Ball so elected, the real estate, whereon said Alfred W. Ball then resided in Prince George's County, Maryland, containing 240 acres more or less, being the same land or tract or tracts of land mentioned in paragraph three of complainant's bill of complaint at and for such sum as complainant might be able to obtain for the same not less than \$35.00 per acre for each and every acre of the herein described tract or tracts of land. A true copy of said power of attorney herein referred to is attached hereto marked "Complainant's Exhibit A1" and is prayed to be read as a part hereof.

Fifth. That thereafter on or about the fifth day of June, 1903, complainant with the knowledge of Alfred W. Ball aforesaid, now deceased, and with his approval, in pursuance of and under the authority and power vested in complainant by Alfred W. Ball by the power of attorney herein referred to in paragraph four of complainant's bill of complaint, and of which power of attorney in complainant as agent of Alfred W. Ball defendant was aware, proceeded to effect a sale, minus the burial plot of one acre more or less,

and of the said burial plot in the discretion of Alfred W. Ball, of the tract or tracts of land of 240 acres, more or less, mentioned in the aforesaid power of attorney of Alfred W. Ball to complainant, referred to in paragraph four of complainant's bill of complaint, the land described in the aforesaid power of attorney being the same land described in paragraph three of complainant's bill of complaint, and on June 5th, 1903, by a certain paper writing or agreement or contract of sale sold the aforesaid tract or tracts of

land of Alfred W. Ball mentioned in paragraphs 3 and 4 of complainant's bill of complaint to the defendant William W.

Stewart of Washington, D. C., at and for the sum of forty dollars an acre for each and every acre of the 240 acres, more or less, excepting however the one acre, more or less, reserved as a burial plot for the Ball family, which also was to pass at said Ball's election, described in Paragraph 3 of complainant's bill of complaint on the following terms and conditions, that is to say: That for and in consideration of the sale by complainant Lewis A. Griffith, as agent and attorney of Alfred W. Ball, aforesaid, to defendant William W. Stewart of the tract of 240 acres, more or less, excepting however the aforesaid burial plot of one acre more or less, herein described, and of the execution, acknowledgment and delivery by Alfred W. Ball, aforesaid, to William W. Stewart, defendant herein of a deed in fee simple free and clear of all liens and incumbrances whatsoever of the aforesaid 240 acres of land belonging to Alfred W. Ball, less the one acre burial plot and of said burial plot at said Ball's election, said defendant, Stewart, agreed to and did on the fifth day of June, 1903, pay to complainant as agent for the aforesaid Alfred W. Ball, now deceased, the sum of \$500. as part purchase price of said tract of land containing 240 acres, more or less, described in paragraph three of complainant's bill of complaint and agreed to complete the purchase of the aforesaid tract by paying to complainant the balance of one half of the whole purchase price of the said 240 acres, more or less, at the rate of forty dollars an acre in cash on or before the seventh day of November, 1903, and for the remaining one-half of the total purchase price by giving five equal promissory notes, bearing six per cent. interest to be made by defendant William W.

Stewart, to the order of Alfred W. Ball, at one, two, three, four and five years from said November 7th, 1903, secured by purchase money mortgage on the aforesaid 240 acres, more or less, duly executed and acknowledged by defendant William W. Stewart, the deed in fee simple aforesaid from Alfred W. Ball to defendant to be executed and delivered when the aforesaid final payments were made, said contract or agreement of sale further providing that the land aforesaid should be surveyed and platted and the total purchase price fixed at the rate of forty dollars an acre as determined by the said survey, costs of which survey should be borne equally by complainant L. A. Griffith and defendant William W. Stewart, and that the proper deed or deeds of conveyance of the aforesaid tract of land described in paragraph 3 of complainant's bill of complaint and abstracts of title thereto showing a clear and unencumbered fee simple title in the aforesaid tract of land should be

made by J. K. Roberts, an attorney of Upper Marlboro Maryland, who should act as attorney for both parties to said contract of sale, L. A. Griffith and William W. Stewart, and be paid a fee of fifty dollars to be borne equally by both parties, with the privilege in complainant as agent of said Alfred W. Ball, of forfeiting the \$500. part purchase price of the aforesaid tract of land described in the foregoing contract of sale in case the balance of the first half of the purchase price be not paid by the seventh day of November, 1903, the aforesaid Alfred W. Ball to have the possessory right to the premises sold and conveyed by said contract of sale between L. A. Griffith as his agent and the defendant William W. Stewart until the balance of the one-half of the total purchase price were paid. A true copy of said contract of sale between L. A. Griffith, agent and attorney of Alfred W. Ball, and William W. Stewart, is attached hereto marked complainant's Exhibit A<sup>2</sup>, and is

6 prayed to be read as a part hereof.

Sixth. That to the making of the contract of sale described in paragraph 5 of complainant's bill of complaint Alfred W. Ball, now deceased, gave his assent prior to its conclusion, and subsequent to the making of said contract of sale approved, ratified and confirmed the same and stood ready at any and all times prior to his death as hereinafter described on compliance by defendant William W. Stewart with the terms of the aforesaid sale to convey by proper deed to the defendant William W. Stewart a good fee simple title free and clear of all liens and encumbrances of every kind and nature to the land described in paragraphs 3, 4 and 5, of complainant's bill of complaint, the land described in each of said paragraphs 3, 4 and 5, being identical, but the defendant William W. Stewart while holding said agreement or contract of sale to be in full force and effect and paying one-half of the taxes on said land described in paragraph 3 of complainant's bill of complaint and in the contract of sale referred to herein for the year 1903, the other half being paid by said Alfred W. Ball or others for him and on his behalf, at no time prior to the death of said Alfred W. Ball, as hereinafter recited, tendered himself ready and willing to perform the agreements and covenants by him to be performed at and before the conveyance to defendant of the land described herein in accordance with the sale thereof.

6½. That in accordance with the terms of the aforesaid contract of sale of the land mentioned in paragraphs 3, 4 and 5 of complainant's bill of complaint the same was surveyed by

7 William J. Latimer, a surveyor of the State of Maryland, suggested by defendant and agreed to by complainant, the aforesaid tract of land was surveyed, and the same, including the burial plot aforesaid, found to contain 288 2/3 acres, with which fact the defendant was duly appraised. Complainant paid the costs of said survey, forty-five dollars. A copy of the report of the surveyor is attached hereto marked "Complainant's Exhibit A-2½."

Seventh. That prior to the seventh day of November, 1903, which day was the time named in the contract of sale set forth in paragraph five of complainant's bill of complaint as the day on or before



which defendant William W. Stewart under his purchase of the land described in paragraphs 3, 4 and 5, of complainant's bill of complaint was required to make payment of the balance of the first half of the purchase price of said land and to execute his five equal promissory notes for the remaining half of said purchase price, namely on November 6th, 1903, Alfred W. Ball died leaving a last will and testament whereby he appointed complainant his executor with full and complete power and authority over decedent's estate, real personal and mixed, a true copy of which last will and testament and the probate whereof is attached hereto marked "Complainant's Exhibit A-3," and is prayed to be read as a part hereof. Thereafter complainant under authority granted and given him December 15th, 1903, by the Orphans' Court of Prince George's County, Maryland, in conformity with the laws of the State of Maryland, a true copy of which order is attached hereto marked "Complainant's Exhibit A-4," and is prayed to be read as a part hereof,

8      tendered himself to defendant ready and willing to perform in each and every particular the matters and things required to be done by Alfred W. Ball in and under the contract of sale between complainant and defendant, filed herewith as "Complainant's Exhibit A-2," that is to say, complainant in December, 1903, after the aforesaid order of the Court was passed, furnished defendant an abstract and a certificate of title, signed by J. K. Roberts, Attorney of Upper Marlboro, Maryland, based on title searches made by said Roberts, showing a good title in fee simple and clear of all liens and incumbrances of every kind and nature, in Alfred W. Ball, in and to the land described in paragraphs 3, 4 and 5, of complainant's bill of complaint, and that a deed from complainant as executor would pass a good title to the same, a true copy of which abstract and certificate of title is filed herewith marked Complainant's Exhibit A-5, and is prayed to be made and read as a part hereof, and also tendered defendant a certified copy of the order of the Court aforesaid, and also paid one-half of the taxes for the year 1903, as required by the aforesaid contract of sale, and furthermore tendered to defendant a proper deed of conveyance made by said J. K. Roberts, Attorney, of Upper Marlboro, Maryland, and complainant offered to deliver duly executed, and acknowledged by complainant as executor of the Estate of Alfred W. Ball, deceased, said deed transferring to defendant a good fee simple title to the aforesaid land described in the contract of sale set forth in paragraph 5 of complainant's bill of complaint free and clear of all liens and encumbrances of any kind or nature whatsoever, a true copy of which deed of conveyance is filed herewith marked "Complainant's Exhibit A-6," and is made and prayed to

be read as a part hereof, complainant at the same time tendering defendant for execution by defendant a purchase money mortgage for one-half of the contract price, and offered to let the defendant into possession of said premises and the rents and privileges thereof from the time in said agreement specified and then and there demanded of defendant that he perform

specifically the matters and things required to be performed on the part of said defendant under the contract set forth in paragraph 5 of complainant's bill of complaint, and complainant tendering said purchase money deed of mortgage from William W. Stewart and Blanch Stewart, his wife, to Lewis A. Griffith, executor of the will of Alfred W. Ball, securing the balance of the purchase price required to be made by defendant and his wife Blanch Stewart, called on defendant personally to execute and acknowledge said mortgage deed herein described and to make and deliver defendants five certain equal promissory notes for  $\frac{1}{2}$  of the purchase price and to pay to complainant the one-half of the total purchase price of said land, less five hundred dollars of the purchase price of said land, paid at the date of the aforesaid sale of said land, but the defendant neglected and refused to perform the matters and things agreed by him to be performed and specifically refused to complete the sale made by him or to accept a deed of conveyance of the property described in paragraph 3, and in the contract of sale set forth in paragraph 5, of complainant's bill of complaint, from complainant, to pay to complainant the balance of \$5,273.00 representing the remainder of the first half of the total purchase price of said land and neglected and refused to execute, acknowledge and deliver

10 to defendant his five certain promissory notes for the other half of said purchase price of said land under the aforesaid contract of sale and a purchase money mortgage on said land securing the aforesaid five equal certain promissory notes, evading as complainant believes performance of his part of the contract but seeking to hold the same as still in force by denying, contrary to the law and the facts of the case, that complainant now Alfred W. Ball was dead could convey to defendant a good fee simple title, clear and unencumbered to the land agreed by the aforesaid contract of sale to be conveyed and expressing a willingness to perform his part of the aforesaid contract of sale if a good title to said land could be conveyed to him. Complainant at this interview in December, 1903, after defendant refused to complete the contract of purchase, inquired of defendant if he still considered in force and effect the contract, or that the same had been forfeited and the \$500.00 paid as part of the purchase price forfeited, complainant saying that he did not regard the contract as ended or that there had been a forfeiture, to which statement defendant responded that he did not consider there had been a forfeiture but that the contract was still in force, that he wished to and was ready to carry out his contract provided the title was good of which he wanted to be certain as he did not think complainant could give him that and said he (defendant) was acting for an oil company, to which complainant assented so far as concerned the nonforfeiture of the amount already paid and the continuance of the contract as in full force, but said he knew nothing of any oil company and had dealt with defendant and still would continue to look to defendant to keep his contract. Complainant refused to acknowledge any interest

- of any oil company or person other than defendant in the contract of sale so far as complainant was concerned saying he looked to defendant alone as the only party he knew to the contract and offered to have said Roberts look further into the matter or submit the matter of title to any reputable title examiner in Prince George's County, Maryland, that defendant might name, and to accept his report on the title, to which defendant gave his assent saying that was a fair proposition, whereupon complainant asked defendant to name a title examiner and complainant and defendant agreed at once on the aforesaid J. K. Roberts as a reputable title examiner and lawyer of Prince George County, and thereafter said J. K. Roberts by request again examined and continued the title and reported the same good at the time of said Alfred W. Ball's death, in Alfred W. Ball in fee simple, free and clear of all liens and encumbrances of any kind and nature whatsoever and that a deed from complainant would pass a good clear title to defendant, which second or continued abstract and certificate of title is filed herewith marked "Complainant's Exhibit A<sup>7</sup>," and is made and prayed to be read as a part hereof, as is also an affidavit of the death of Elinor Ball, procured at the request of defendant who claimed the abstract of title did not carry assurance on that point, which said affidavit is filed herewith marked "Complainant's Exhibit A<sup>8</sup>" and is made and prayed to be read as a part hereof. Complainant on the 15th day of February, 1904, submitted said new or continued abstract and certificate of title and the abstract of which it was a continuation of the aforesaid J. K. Roberts to defendant and tendering defendant the said certificate, and also a good and proper deed in fee simple free and clear of all liens and encumbrances of every kind and description whatsoever from complainant as executor of the last will and testament of Alfred W. Ball, deceased, to defendant to the property, including the burial lot of the Ball family hereinbefore referred to, described in the contract of sale set forth in paragraph 5 of complainant's bill of complaint demanded of defendant that he comply with the terms of sale and do and perform the acts and things on his part to be performed. In short your complainant did or offered to do and still is ready and willing to do each and every thing required of him or of Alfred W. Ball in said contract. The said defendant at this time and also theretofore as stated on one pretext or another refused and still refuses to carry out his said contract with complainant though demand has been duly made on him. A true copy of the deed of conveyance and of the purchase money mortgage herein referred to are filed herewith marked "Complainant's Exhibits A<sup>6</sup>, A<sup>9</sup>, respectively, and are made and prayed to be read as a part hereof.
- Ninth. Complainant on information and belief says that prior to this last tender on February 15th, 1904, complainant's attorney, William E. Ambrose, in the month of January, 1904, by authority from complainant saw A. A. Thomas, attorney for defendant and to whom defendant had referred complainant and said Ambrose as his,

said Griffith's attorney, authorized to act for him, and informed said Thomas that he, said Ambrose had examined into the matter and found that by statutory enactment of Maryland, the complainant as executor could pass a good title to the land of the decedent Ball named in the contract of sale and stated to said Thomas that complainant was ready to deliver to defendant a good valid deed passing said property in question and that complainant would give a warranty deed at that. Said Thomas as complainant is in-

13 formed and believes replied that he did not believe complainant could give a good title to defendant under the condition of title, that he did not believe that could be done under the Maryland statute or that the legislature could lawfully enact such a statute, and that his client, the defendant, stood by his contract of purchase and was ready and willing to take the land whenever complainant could keep the contract and give a good title. Complainant by his attorney informed said defendant by his attorney that he had a certificate of title from J. K. Roberts of Upper Marlboro, Maryland, as required by the contract of sale showing a good title could be given to the property by complainant which complainant would furnish defendant, that the land had been surveyed as required and was ready to be produced, and that complainant was ready to execute, acknowledge and deliver a good fee simple warranty deed to the property, and called on defendant to keep his part of the contract of purchase, which as stated, defendant refused to do on the ground of the condition of the title.

Tenth. Complainant says that as herein set forth he has at all times tendered himself ready and willing to perform all the things and conditions required by him to be performed and called on defendant to keep his part of the contract of purchase, but the said defendant refused and still refuses to do anything which he agreed to do, to pay the balance of the first half of the purchase price, to give the promissory notes and purchase money mortgage required by him to be done and performed, and still refuses to carry out his said contract though demand has been duly made on him.

14 That your complainant is injured by the refusal of the said defendant to carry out his contract and he has no adequate remedy at law.

Wherefore the premises considered, your complainant prays:

First. That process may issue out of this honorable Court to defendant requiring him to answer the exigencies of this bill.

Second. That the complainant be adjudged and decreed to be entitled to a specific performance of the contract herein set forth, and that the defendant be required on complainant tendering him a certificate of title from J. K. Roberts, Attorney of Upper Marlboro, Md. stating that at the time of his death Alfred W. Ball had a good fee simple title, free and clear of all liens and encumbrances of every kind and nature whatsoever to the property described in the contract of sale filed as Exhibit A, to this bill and that title in fee simple free and clear of all liens and encumbrances can be conveyed by complainant as Ball's executor, and a good and proper deed of conveyance from complainant as executor of the last will of Alfred W.

Ball, deceased, to defendant of the fee simple title to said property described in the aforesaid contract of sale, to do and perform the acts and things required by said contract of sale to be done and performed by defendant and to pay to complainant forthwith the sum of — with interest at the rate of six per centum per annum from the — day of December, 1903, and to make, execute and deliver to

15 complainant his, defendant's, five certain equal promissory notes for — each, payable to the order of complainant as executor of the Estate of Alfred W. Ball, deceased, payable at one, two, three, four and five years from the — day of December, 1903, with interest payable at the rate of six per cent. per annum on said notes from said — day of December, 1903, until paid, and to make, execute, acknowledge and deliver to complainant his defendant's mortgage on the property described in the contract of sale and deed of conveyance from complainant to defendant to secure the aforesaid five promissory notes and interest thereon.

Third. And for such other and further relief as the nature of the case may require and as to the Court may seem meet and proper.

The defendant to this bill is William W. Stewart.

LEWIS A. GRIFFITH.

WM. E. AMBROSE,  
CHAS. H. MERILLAT,  
WM. E. AMBROSE,  
*Solicitors for Complainant.*

DISTRICT OF COLUMBIA, ss.:

Personally appeared before me Lewis A. Griffith who after being first duly sworn says that he has read the foregoing bill of complaint by him subscribed and knows the contents thereof, that the facts therein stated as of his own personal knowledge are true and those stated on information and belief he believes to be true.

LEWIS A. GRIFFITH.

16 Subscribed and sworn to before me this 15 day of February, A. D. 1904.

[NOTARIAL SEAL.]

JNO. L. SMITH,  
*Notary Public, D. C.*

COMPLAINANT'S EXHIBIT A<sup>1</sup>.

Filed February 15, 1904.

Know all men by these presents that I A. W. Ball of Prince George's County in the State of Maryland, in consideration of the sum of One dollar current money and other valuable considerations to me moving, do hereby constitute and appoint Dr. L. A. Griffith, of Upper Marlboro in said State and County, to be my Agent and Attorney, for me and in my name to *negociate* for the sale and transfer of my real estate in Prince George's County near Meadows Post Office, whereon I now reside, said real estate containing 240

acres of land, for any sum he may be able to obtain for the said real estate not less however than the sum of \$35 dollars per acre, for each and every acre of the same to be all over and above \$35 per acre the fee and commission to be paid to the said L. A. Griffith for the services rendered me in obtaining a sale for the said property, to be paid to him out of the proceeds of the first payment to be paid for the property by the purchaser. I also agree to sign the contract in writing ratifying and approving of the sale to be made of the said real estate, provided the sum of four hundred dollars, be paid to me, it being also understood and agreed that the sale shall be consummated with 150 days from date of signing contract of sale, by payment by the purchaser of the sum of One half of the whole purchase money, (and that one acre known as the Burying ground on the said property is to be reserved, for ever to me, and my heirs, and that I am to have the use of the houses on said property and necessary Wood until January 1st 1904.

Witness my hand and seal this 4th day of June 1903.

ALFRED W. BALL. [SEAL.]

STATE OF MARYLAND, *Prince George's County, To wit:*

I hereby certify that on this 4th day of June 1903 before me the subscriber a Justice of the Peace of the said State in and for the said County, personally appeared A. W. Ball, being well known to me as the person who executed the foregoing power of Attorney and he acknowledged the same to be his act and deed.

J. ALFRED RIDGLEY, J. P.

THE STATE OF MARYLAND, *Prince George's County, act:*

I, W. R. Smith, Register of Wills for Prince George's County, do hereby certify that the foregoing is a true copy of the Exhibit "A" filed with petition of Louis A. Griffith Executor of Alfred W. Ball, late of Prince George's County, Maryland deceased, on the 17th day of November 1903, in the Office of the Register of Wills for Prince George's County, Maryland. Office of the Register of Wills for said county.

18 In testimony whereof I hereunto subscribe my name and affix the seal of the Orphans' Court of said county this 23rd day of November in the year of our Lord nineteen hundred and three.

Test:

[SEAL.]

W. R. SMITH,  
*Register of Wills for Prince George's County.*

19

COMPLAINANT'S EXHIBIT A<sup>2</sup>.

Filed February 15, 1904.

This agreement made by and between L. A. Griffith, duly authorized Agent and Attorney under a certain power of Attorney from Alfred W. Ball, both of Prince George's County, Maryland, parties



of the first part, and Wm. W. Stewart of Washington City, D. C. of the second part. Witnesseth that the said W. W. Stewart, has paid to the said L. A. Griffith Agent the sum of Five Hundred Dollars, (\$500) part purchase price of the total sum to be paid for a certain tract of land, owned by the said Alfred W. Ball, near Meadows Post Office, Prince George's County, Md. containing Two hundred and forty acres of land more or less (240), known as part of a tract of land called "Crotch Hall," same being sold at the rate of \$40. per acre, which said sum of Five hundred Dollars is hereby acknowledged, to have been paid to and received by the said L. A. Griffith agent, and the said L. A. Griffith, as the Agent and duly authorized Attorney of the said Alfred W. Ball, hereby grants, bargains and sells, and agrees to convey by proper deed or deeds of conveyance in fee simple free and clear of all liens and incumbrances of every kind and nature, duly executed by the said Ball, to the said Stewart, the said Two hundred and forty acres of land, upon further payments and conditions hereinafter named, to wit, the balance of one half of the purchase price of the said (240) acres, more or less, at the rate of Forty dollars per acre is to be paid to the party of the first part, on the 7th day of November 1903 and the remainder One half of the total purchase price, is to be divided into five equal payments, secured by five promissory mortgage notes, secured by purchase money Mortgage upon the said property to be given by said Stewart and wife, duly executed and acknowledged, by him and his wife, said notes secured thereby, to be payable to the Order of Alfred W. Ball, for said equal one Fifth sum of remaining one half of said purchase price, aforesaid to become due in One, two, three, four and five years, after said November 7th 1903, respectively bearing interest at the rate of six per cent. (6%) per annum payable semi annually. The said land is the same tract or tracts of land whereon the said Alfred W. Ball, now resides and the same land which was devised him by his father Henry Jackson Ball, by his last will and Testament, dated October 1st, 1875, recorded in the Will records of Prince George's County, Maryland in Liber W. A. J. Jr. No. 1, folio 117 &c. excepting however certain tracts of land conveyed by said Alfred W. Ball to certain parties in all about six acres as appears on the land records of the said County. And the said party of the first part reserves therefrom a certain burial lot of One acre, intended for burial purposes conditioned however that if the said Ball should desire to abandon the said burial tract and to remove the remains there interred he shall have paid to him thereof by the said party of the second part the sum of \$40 Forty dollars in consideration thereof, said Ball to have access by road leading to said burial lot at all times. The said land is to be surveyed and a plat made thereof, and the total purchase price is to be at the rate of Forty dollars per acre as determined by the said survey the costs of the said survey is to be borne equally by the said parties of the first and second part, the said L. A. Griffith and W. W. Stewart, each to pay one half of the total survey costs. Proper deed or deeds of conveyance and abstracts of title of the said land based upon title searches thereof is

to be made by J. K. Roberts attorney of Upper Marlboro, Md. showing clear and unincumbered fee simple title in the said land above mentioned and described, in the said Alfred W. Ball, and one half of the total costs for same not exceeding \$50 is to be born- equally by the parties hereto. In case the remainder of the first half of the purchase price be not paid on the 7th day of November, then the said \$500. so so paid to the said Griffith, is to be forfeited and the contract of sale and conveyance to be null and void and of no effect, otherwise remain and be in full force. The said Ball is to have the right to continue to dwell and live in the house now occupied by him on the said land herein mentioned, and to cut and use the necessary fire wood therefrom up to and until April 1st 1904, and the taxes for the year 1903 are to be paid one half by the said Ball and one half by the said Stewart. The possessory right to all of the premises on the property mentioned herein is to remain in the said Ball, until the one half payment of the total purchase price herein provided for on November 7th 1903 has been fully paid and satisfied, to the said L. A. Griffith, Agent.

Witness our hands and seals this 5th day of June, 1903.

L. A. GRIFFITH, Agent. [SEAL.]

WM. W. STEWART. [SEAL.]

Witness for Griffith  
J. K. ROBERTS.

Witness for W. W. Stewart,  
A. W.

22 STATE OF MARYLAND, *Prince George's County, To wit:*

I hereby certify that on this 5th day of June in the year 1903, before me the subscriber a Justice of the Peace of the said State, in and for the said County personally appeared Lewis A. Griffith, Attorney and Agent of the said Alfred W. Ball, under power of Attorney, duly executed, and he did acknowledge the said Agreement herein set forth to be his act and deed.

J. ALFRED RIDGELY, J. P.

THE STATE OF MARYLAND, *Prince George's County, set:*

I, W. R. Smith, Register of Wills for Prince George's County, do hereby certify that the foregoing is a true copy of the Exhibit "B" Filed with Petition of Louis A. Griffith, Executor of Alfred W. Ball—late of Prince George's County deceased, on the 17th day of November 1903 in the Office of the Register of Wills for Prince George's County, Maryland Office of the Register of Wills for said County.

In testimony whereof I hereunto subscribe my name and affix the seal of the Orphans' Court of said county this 23rd day of November in the year of our Lord nineteen hundred and three.

Test:

[SEAL.]

W. R. SMITH,

*Register of Wills for Prince George's County.*



COMPLAINANT'S EXHIBIT A<sup>3</sup>.

Filed February 15, 1904.

MARYLAND, *set*:

The State of Maryland to all Persons to Whom these Presents shall come, Greeting:

Know ye, That the last will and testament of Alfred Wilmer Ball late of Prince George's County, deceased, hath in due form of Law been exhibited, proved and recorded in the Office of the Register of Wills for said County; a Copy of which is to these presents annexed; and Administration of all the goods, chattels and credits of the said deceased, is hereby granted and committed unto Dr. L. A. Griffith of Prince George's County the Executor by the said Will appointed:

Witness, F. C. Duvall, Chief Judge of the Orphans' Court of Prince George's County, this 17<sup>th</sup> day of November in the year of our Lord, nineteen hundred and three.

Test:

[SEAL.]

W. R. SMITH,

*Register of Wills for Prince George's County.*

24 I, Alfred Wilmer Ball of Prince George's County, Maryland, considering the certainty of death and the uncertainty of the time thereof, and being desirous to settle my worldly affairs here below before it shall please Almighty God in his infinite wisdom and mercy to call me hence, do make publish, and declare this paper writing as and for my last Will and Testament, in manner and form following.—

*Item.* I commit my soul into the hands of Almighty God who gave it and my body to the earth to be decently burried at the discretion of my Executor hereinafter named, and after all my just debts and funeral expenses are paid I give devise and bequeath as follows;

*Item.* I direct, authorize and empower Dr. Lewis A. Griffith my Executor herein named, to have full and complete power and authority over my entire estate real personal and mixed of every kind and description and wherever being or situate, and I do hereby further direct, authorize and empower him the said Lewis A. Griffith my executor to sell my real estate of which I may die seized and possessed at the time of my death wherever the said real Estate may be situate, at public sale after One month's notice by due publication of said sale and of the time, place and manner of said sale, the said real estate to be sold upon such terms and conditions as my executor shall deem proper and expedient,—I give devise and bequeath to the Trustees of Forest Grove Methodist Episcopal Church, South (now situated at Meadows, Prince George's County, Maryland,) and to their successors as Trustees of said Church, the sum of Two Thousand dollars (\$2000.) the same to be by them invested in some safe real estate security to be by them approved, and the interest only

25 accruing from the said investment to be used by them their successors, for the purpose of keeping upon the grave yard and church yard, of the church, and keeping, the fences around the same always in thorough condition and repair and in beautifying the grounds around the said church, the said interest arising from the said investment of the said Two Thousand dollars to be so used for the period of Forty years after my decease, and at the Expiration of the period of said forty years, after my decease, the said Two Thousand dollars (\$2000,) is to be re-invested by the said Trustees and their successors as trustees of said Church, and the interest and income arising from said investment to be used and expended by the said Trustees and their successors, as trustees of said Church, for the benefit of said church and its support preservation and maintenance, as to the said trustees and their successors as trustees of said Church may seem best and most advantageous for the good and welfare of the said Church, the said Two Thousand dollars to be paid as far as possible out of my personal estate, but in case the said personal estate should prove insufficient the deficit is to be made up out of my real Estate directed to be sold before any part of the proceeds of the said real estate is divided as hereinafter stated,

*Item.* I give devise and bequeath all the rest and residue of my estate real and personal after the above legacy of (\$2000,) is taken out and deducted and after the payment of all costs, debts, and charges, are paid to the children of the brothers and Sisters of my deceased father Henry Jackson Ball, and of my deceased mother Eleanor Ball the said brothers and sisters of my father being as follows as far as I at present know them; William T. Ball, Sallie

26 Winkler, and Betsey Ridgaway; and the brothers and sisters of my mother being also as follows, Mary Hetchinson, Ann Shreves, and William Swan, and to the children of my deceased half sister Sarah Allen the ones now living, being James B. Allen, and Thomas F. Allan, in the following manner and proportions; each set of children of the above named brothers and sisters of my deceased father and mother, shall together take and enjoy that portion of my estate which their respective father or mother as the case may be would take if now living at the time of my death and the said Thomas F. Allan and James B. Allan, my half nephews, (children of my deceased half Sister Sarah Allan) shall each take and have a share of my Estate equal only to the share which a brother or sister of my deceased father or mother would take if said brother or sister should be living at the time of my death, and should be my only heirs at law,—

*Item.* I further direct and provide that in the event that I shall have omitted to name herein any brother or sister of my deceased father or mother, who may in any event prove to be living at the time of my death or if being dead it should be ascertained that he or she left heirs surviving him or her, which heirs or children of them respectfully should be living at the time of my death that then the said unknown brother or sister, if living at the time of my death or if dead, that their children, and issue who shall be living at the time of my death shall take a part of my estate equal in quantity

and amount to the share herein devised to the children of the said William T. Ball, Sallie Winkler, Betsy Ridgeway and Mary Hetchinson, Ann Shreves, and William Swan, and to the share herein devised and given to the said Thomas F. Allen and James B. Allen as above set forth.

27 *Item.* I do further provide that my executor shall place a monument or tombstone at my grave and at the grave of my deceased brother James T. Ball in case I shall not have placed one at the grave of my brother during my life time, which I may do, and the costs of the said tomb stones are to be deducted out of the Estate before any bequests or legacies herein provided for shall be distributed, by my said executor,—

*Item.* I do hereby nominate, constitute and appoint Dr. Lewis A. Griffith, of Upper Marlboro, Maryland, to be the sole executor of this my last Will and Testament, and request and direct that he shall be allowed a commission of ten per cent. on all of my estate coming into his hands the same to be computed on the gross amount of estate, real and personal, coming into his hands as executor.

In testimony whereof I hereunto subscribe my name and affix my seal this 10th day of July 1903.

ALFRED W. BALL. [SEAL.]

Signed, sealed, published and declared by the foregoing testator Alfred Wilmer Ball, as and for his last Will and Testament in our presence, who at his request in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

JOSEPH K. ROBERTS.  
EVERETT E. PUMPHREY.

28 COMPLAINANT'S EXHIBIT A\*.

Filed February 15, 1904.

In the Orphans Court of Prince George's County, Maryland.

*In re* The Estate of ALFRED WILMER BALL, Deceased.

*Order of Court.*

Upon petition of Lewis A. Griffith, Executor of Alfred Wilmer Ball, filed in this Court, the said Lewis A. Griffith, appearing as by the records of this Court, doth show, to have duly probated the last Will and Testament of the said deceased and to have been named in the said last will, etc. as the Executor of the last Will and to have duly qualified as such executor, and further reciting the contract of sale made by the said Lewis A. Griffith, as Attorney for the said Alfred Wilmer Ball under Power of Attorney, filed with the said petition, with a certain William W. Stewart, which said contract is filed also with the said petition, and that the said contract by reason of

the death of the said Alfred Wilmer Ball, on the 6th day of November, 1903, the day before the contract was to be carried out, could not be carried out by the said Alfred Wilmer Ball, in his lifetime and setting forth the fact that this Court had power and authority in the premises to authorize him as such Executor to carry out and fulfill the said contract with the said W. W. Stewart, and this Court being of the Opinion that it has such authority to so authorize him to carry out the said Contract with the said W. W. Stewart.

It is thereupon this 15th day of December 1903, by the Orphans Court of Prince George's County, upon consideration of the  
 29 said petition, adjudged and ordered, that the said Lewis A. Griffith as Executor of the said Alfred Wilmer Ball, be and he is hereby authorized further to Execute a deed to the said Stewart conveying to him the said Stewart a good fee simple title unincumbered of the said property (real estate) of said Ball mentioned in the same, upon the payment by the said Stewart of One half of the entire purchase money less the \$500.00 deposit, already paid, and the execution by the said Stewart of his five promissory notes each for the One fifth part of One half of the entire purchase money of said land, payable to the order of the said Lewis A. Griffith, as Executor, in One, two, three, four and five years from date, with interest payable semi-annually, the same to be secured by a purchase money mortgage on said property as mentioned in the said agreement of sale.

D. T. SHERIFF, C. J.  
 R. IRVING BOWIE, A. J.  
 JOHN C. JONES, A. J.

Test:

W. R. SMITH,  
*Register of Wills.*

30 THE STATE OF MARYLAND, *Prince George's County, set:*

I, W. R. Smith, Register of Wills for Prince George's County, do hereby certify that the foregoing is a true copy of an order passed by the Orphans Court of Prince George's County Maryland on the 15th day of December, 1903, as recorded in Liber W. R. S. No. 1 folio — one of the Record books of the Office of the Register of Wills for said County.

In Testimony Whereof I hereunto subscribe my name and affix the seal of the Orphans' Court of said county this 17th day of December in the year of our Lord nineteen hundred and three.

Test:

[SEAL.] W. R. SMITH,  
*Register of Wills for Prince George's County.*

31

COMPLAINANT'S EXHIBIT A<sup>5</sup>.

Filed February 15, 1904.

*Caption.*

Abstract of the title of Alfred Wilmer Ball to a tract of land called "Crotch Hall," Part of "The Child's Portion," containing two hundred and eighty-eight acres of land and 2/3rds of an acre (288 and 2/3rds.), as surveyed out by William J. Latimer, surveyor for Prince George's county, Maryland, in December, 1903.

NOTE.—(For the extracts see within.)

No. One.

Josiah Moore

to

John Reed Magruder.

Deed Dated February 23, 1792. Liber J. R. M. No. 1, Folio 143.

Grants a tract of land in Prince George's County, Maryland near Centerville called "Addition to Crotch Hall" (described fully by metes and bounds therein.) Containing 100 acres of land, being the same land conveyed to him Josiah Moore by Alexander C. Moore, April 8, 1784.

No. 2.

Peter Howard

to

John Reed Magruder.

Deed Date- June 28, 1794. Liber J. R. M. No. 3, Folio 108.

Grants a tract called "Moore's Adventure which was granted by Patent to Peter Moore Jr. in the year 1766 described as being near Henson Branch, containing 50 acres of land.

This is not a part of the property mentioned in the caption.

32

No. 3.

William Baker, Overton Carr, and Francis Tolson, a majority of the commissioners appointed to divide or sell the real estate of James Moore,

to

John Reed Magruder.

Commissioners' deed, April 14, 1802. Liber J. R. M. No. 9, folio 213.

Recites the death of James Moore intestate and the petition filed in the County Court of Prince George's County, Md. to have his

real estate in the said County divided among his heirs or sold for division. That a public sale was had on the December 18, 1797 and the property was sold at the public auction to the said Magruder, by the said three Commissioners, and the sale was ratified by the County Court, April 14, 1802 upon their Report of Sale filed in the said County Court.

Grants in fee the following property of which James Moore died seized and possessed, in said County, a tract of land called "The Child's Portion" containing 100 acres. (2). Also the "Joint Enlargement of Crotch Hall" containing 39 acres of land. (3) A tract called "Moore's Gain" containing only Ten (10) acres of land.

## No. 4.

John Reed Magruder

to

Jane Contee Marbury, his daughter, wife of Wm. Marbury.

Liber J. R. M. No. 13, folio 386. Deed in fee, September 11, 1809.

Grants all the above tracts of land, reserving to himself a life estate therein.

William L., John H., and Alexander M. Marbury

to

Jane Contee Penn, born Marbury.

Liber A. B. No. 6, folio 302. Deed in fee, November 6, 1830.

Recites the death of their mother Jane Contee Marbury intestate, leaving the grantors and the grantee her only 4 living heirs  
 33 at law, to whom the said real estate of their mother descended, and that they are willing to release unto their sister Jane C. Penn all their right title and interest in and to the above property. Grants all their right title and interest in the above property conveyed to their mother Jane C. Marbury by their grandfather John Reed Magruder, as above set forth.

Hanson Penn and Jane C. Penn

to

Henry Jackson Ball.

Liber A. B. No. 8, folio 14. Deed in fee, April 1, 1833.

Grants in fee the said property conveyed by Magruder to his daughter Marbury and as above conveyed to Mrs. Jane C. Penn.

NOTE.—Another portion of the Ball title, starts here. Will of John Baptist Kerby, dated November 15, 1827. Probated May 10, 1828. Will Record "T. T." No. 1, folio 429. Testator devised to his nephew Samuel Kerby among other devises to other- not necessary to mention herein the following property:

A tract or piece of land near Centerville in said County of Prince George's County, called "The Child's Portion" containing 27 acres of land. This will is in legal form and properly executed.

Samuel Kerby  
to  
Henry Jackson Ball.

Liber A. B. No. 7, folio 85. Deed. Date, January 26, 1832, \$100.

Grants the above land 27 acres.

Henry J. Ball and wife  
to  
George T. Hardy.

Liber L. N. No. 1, folio 307 (307). Deed. Date, October 28, 1852.

Grants in fee a tract of land called "Moore's Adventure" containing 50, — and mention- in deed *form* Jno. Reed Magruder to Jane C. Marbury shown above.

34

No. 9.

Henry J. Ball and wife, Eleanor,  
to  
Chas. F. Calvert.

Liber C. S. M. No. 3, folio 122. Deed dated February 14, 1859.

Grants for the sum of \$1158.40 and a note of Cecilius B. Calvert for \$135.84 the following property:

Grants part of a tract of land called "Crotch Hall" which lies North of the R. R. from Centerville to Alexandria, and which is described as follows:

Beginning at a stone standing at the Junction of the Long Old Fields and Piscataway Road with the Centerville and Alexandria road, the same being the Sixth (6th) bound of Edward Darcy's part of a tract of land called "Chance" and running thence with the Alexandria Railroad the following courses and distances metes and bounds, South 71 degrees, West 49 and  $\frac{1}{2}$  Perches, then South 83 degrees, West 26 Perches to a stake and stone at the end of 55 perches on the second line of the original Plat, thence with the said second line North 46 degrees, West 151 Perches, to a stone, thence North 95 and  $\frac{1}{2}$  perches, then South 84 degrees, East 88 Perches to a stone, then South — degrees, West 5 perches, thence South 1 and  $\frac{1}{4}$  degrees, West 127 Perches, thence South 44 degrees, East 44 perches, thence South 87 and  $\frac{1}{2}$  degrees, East 61 and  $\frac{3}{4}$  perches, thence South 31 degrees, East 5 perches to the beginning. The number of acres in the above grant is not given.



Henry J. Ball and wife  
to  
George F. Mayhew.

Liber H. B. No. 12, folio 242. Deed. Date, April 16, 1877; \$115.

Grants a piece of land called a part of the "Addition to Crotch Hall" containing 7 acres of land in fee.

35 Last Will and Testament of Henry Jackson Ball, dated October 1, 1875. Probated September 10, 1877. Will Record A. J. Jr. No. 1 folio 117. Duly executed according to law with three witnesses to its execution by him, provides as follows:

Devises all his property real and personal to his son Alfred Wilmer Ball in consideration of his constant care and attention to me, all the property which he now owns or may hereafter acquire, and appoints the said Alfred Wilmer Ball to be the sole Executor of the said Will.

End of Henry J. Ball, title.

Commencement of the part of the Alfred W. Ball part of the title:

This is a part of a tract called "Crotch Hall" and being the part of the said Crotch Hall of which a certain Nathan Summers late of the said county of Prince George's County, Maryland, died seized and possessed. The said Nathan Summers died about year 1840 leaving the following children, to wit, Louisa Summers, Ann Maria Sommers, Ann Marshall, wife of Richard H. Marshall, James Summers, Henrietta Summers, Henry Summers, Warren Summers, Thomas Summers, Deborah Berry wife of — Berry, and Mary Cecil wife of Samuel Cecil. He died seized of the real estate in the said County, called "Magruder' Plains" ("John's Choice" "Belfast" "Gray Eagle, Enlarged" "Chillum Castle Manor" and "Crotch Hall") in all about 1223 and  $\frac{1}{2}$  acres as appears on the plats filed in the Court of Chancery in the Land Office in Annapolis, Maryland, where the old Chancery records are and which or rather a copy of the same is filed in the case of Nathan Bickford and wife,

36 *vs. Summers et al.*, No. 186 Equity in the Circuit Court for Prince George's County, Maryland. The real estate of the said Nathan Summers containing as above stated 1223 and  $\frac{1}{2}$  acres was divided in the Court of Chancery of Maryland in the year 1844 and by the final decree in partition filed in the Court of Chancery in the case therein of *Summers et al. vs. Summers et al.*, in the division thereof, a part of Lot No. 8 of said real estate being the tract of land called "Crotch Hall" was allotted to Mary Cecil wife of Samuel Cecil. This partition made of the said real estate of Nathan Summers was finally ratified by the Court of Chancery, by final decree filed therein. The said part of Lot No. 8 allotted by the Commissioners to Mary Cecil and ratified by the Maryland Court of Chancery contained 126 acres.



Mary Cecil and Henry J. Ball  
to  
Alfred Wilmer Ball.

Liber H. B. No. 4, folio 829. Deed dated June 24, 1871.

Recites sale of land allotted to Mary Cecil as above to Henry J. Ball by Samuel Cecil, her husband, in the year 1846 for \$567, which has been fully paid, but Ball never got a deed for the same, and is now anxious that the same shall be conveyed to his son Alfred W. Grants unto the Alfred W. Ball the said 126 acres of land called a part of a tract of land called "Crotch Hall."

Alfred W. Ball made the following conveyances of the property devised to him by his father Henry J. Ball and of that conveyed to him by Mary Cecil and Henry J. Ball, as above.

Alfred W. Ball  
to  
Elizabeth Richardson.

Liber J. W. B. No. 7, folio 487, November 3, 1886.

Grants 2 acres of a tract called Crotch Hall.

37                      Alfred W. Ball.  
                             to  
                             Susanna Mayhew.

Liber J. W. B. No. 5, folio 352. Deed dated October 18, 1885.

Grants 2 acres, being a part of a tract called "Addition to Crotch Hall."

Alfred W. Ball  
to  
Walter N. Richardson.

Liber J. W. B. No. 31, folio 675. Deed dated January 15, 1895.

Grants 2 acres of the tract called "Crotch Hall."

Alfred W. Ball  
with  
H. W. Coffin and T. W. Isham.

Liber No. 7, folio 157. Agreement of sale of 125 acres of land called Crotch Hall at \$20 per acre, the same lying between the Magruder and the Osborne properties.

This agreement was dated March 11, 1902, and was to be of no effect and virtue if the parties failed to pay for the same within 6

months from March 11, 1902, which Mr. Ball says they did not do, so if that be correct and it must be so, the said contract is of no virtue in law.

### Judgments and Other Liens.

**Judgment.**

I have examined the records of Prince George's County, Maryland for Judgments of record against Alfred W. Ball and find none of record against him.

**Taxes, etc.**

The taxes on the property mentioned in the caption are all paid except in 1903 which will be due on July 1, 1903.

38 Alfred Wilmer Ball, bachelor,  
to  
Dr. Lewis A. Griffith.

Power of attorney dated June 4, 1903. Consideration, \$1 and other valuable considerations.

Grants unto the said Griffith full power and authority to sell the real estate mentioned in the Caption at a sum not less than \$35 per acre for the same.

Recorded among the land records of Prince George's County but not as yet enrolled at length on the said records.

Dr. L. A. Griffith, attorney,  
with  
Wm. W. Stewart.

Agreement of sale of the property mentioned in the caption for a sum of forty dollars (\$40) per acre, the same to be paid for as follows:

\$500 cash on the execution of the Agreement and the balance to be paid as follows: One half of the same less the \$500 cash to be paid on November 7, 1903 and the balance of the one half of the total purchase price for the said land to be secured by a purchase money mortgage, to secure five promissory notes each for the one fifth of the one half of the said purchase money each one fifth part to be paid in one, two, three four and five years from date of November 7, 1903, evidenced by the 5 promissory notes of the said Stewart to be payable to the order of the said Ball.

The title and papers to be prepared by Joseph K. Roberts Att'y at a cost of not more than (\$50) fifty dollars.

This agreement is recorded among the land records of said County of Prince George's County.

39 Last Will and Testament of Alfred Wilmer Ball, deceased.  
Dated July 10, 1903 and Probated and recorded in the Office

of the Register of Wills of Prince George's County, Maryland in the said Will records "W. R. S. No. 1."

The testator after leaving \$2000 (Two thousand dollars) of his estate to the Trustees of the "Forest Grove Methodist Episcopal Church South" at Meadows P. O. Prince George's County, Maryland, devised his estate real to Dr. Lewis A. Griffith of the said County of Prince George's and directed and empowered him to sell the same and to distribute the proceeds after deducting the Two thousand Dollars above mentioned to the children of the brothers and sisters of his deceased father Henry Jackson Ball and of his deceased mother Eleanor Ball, the brothers and sisters of his father Henry Jackson Ball being as follows: William T. Ball, Sally Winkler and Betsey Ridgaway, and the brothers and sisters of his deceased mother Eleanor Ball being as follows: Mary Hetchinson, Ann Shreeves and Wm. Swann and he also devised a part of his estate or the proceeds of the same to the children of his deceased half sister Sara Allen the ones then living being James B. Allen and Thomas F. Allen—the said Allens to have a share equal to the share which a brother or sister of his deceased father and mother would take if said brother and sister were living at death of testator, nominates Dr. L. A. Griffith Executor of the said Will.

Witnesses by two witnesses as required by the Laws of Maryland passed in the year 1882.

In the Orphans' Court of Prince George's County.

*In re* the Estate of ALFRED WILMER BALL, Deceased.

Petition of Lewis A. Griffith M. D. Executor of the said Will, reciting the said Contract of sale executed by him as Attorney  
40 for the said Alfred Wilmer Ball, under the said Power of Attorney of the date of June 4, 1903 and asking the Court to pass an order authorizing him as said Executor to convey the said property to said Stewart (William W.) under the provisions of the Code of Maryland in such cases made and provided upon the payment by the said Stewart of one — of the whole purchase money less the five hundred dollars paid to him by said Stewart on June 5, 1903 the day of the execution of the said Contract of sale, and the securing of the deferred payments of one half of the whole purchase money by the execution by said Stewart of a mortgage on the said land for the said deferred payments.

November 17, 1903 the Court passed an order so authorizing the Executor to convey the said real estate to said Wm. W. Stewart as prayed for in the said Petition.

The said Order was amended by the insertion of the word "Unincumbered" in the amended order and passed by the Court December 15, 1903, as Amended.

#### Taxes.

I find no taxes due on the said property but that they are all paid as appears by the Certificate of Richard N. Ryon Treasurer of Prince George's County, Maryland, which is hereto attached as a part hereof.

## Judgments.

I find none such in the Judgment records of Prince George's County, Maryland against Alfred Wilmer Ball, deceased.

## Opinion.

I hereby certify that I have carefully examined the title of the said Alfred Wilmer Ball to the property mentioned in the Caption and I find the same good of record in the said Alfred Wilmer Ball, as disclosed by examination of the land record books of Prince George's County, Maryland. I further certify that a deed from Dr. Lewis A. Griffith Executor of the said Alfred Wilmer Ball, Last will and testament, pursuant to the said order of the Orders of the Orphans' Court of Prince George's County, Maryland passed November 17, 1903 and December 15, 1903 will convey to the said William W. Stewart the purchaser, a good free and unincumbered title to the said real estate mentioned in the Caption.

December 15, 1903.

JOSEPH K. ROBERTS,  
*Att'y at Law.*

I further certify that I was authorized by said Stewart and said Griffith Att'y to examine title of said Ball to said land and make Abstract of the title and prepare all papers at a cost of not more than Fifty dollars (\$50).

JOSEPH K. ROBERTS,  
*Att'y at Law.*

42 *Certificate of State and County Taxes.*

Alfred W. Ball, 100 acres, Childs Portion, 139 acres, Crotch Hall, 9th Dist., to Prince George's County, Dr.

Assessed, \$1,459.

Taxes for 1900.

Interest .....  
Cost of Sale.....

(Paid.)

Clerk's Fee (C. C.).....  
Poundage .....  
Penalty .....

Taxes for 1901.

(Paid.)

Penalty, Interest and Costs.....

Taxes for 1902.

(Paid.)

Penalty, Interest and Costs.....

## Taxes for 1903.

(Paid.)

Penalty, Interest and Costs.....

## Taxes for 1—.

Penalty, Interest and Costs.....

Certificate ..... 50¢

Treasurer's Office, Upper Marlboro,

PRINCE GEORGE'S COUNTY, MARYLAND, Dec. 17, 1903.

I hereby certify That the above statement is the correct amount of State and County Taxes in arrears, as appears upon the records of this office.

R. N. RYAN,

*Treasurer of Prince George's County.*

43

COMPLAINANT'S EXHIBIT A<sup>e</sup>.

Filed February 15, 1904.

This indenture made this day of December in the year One Thousand Nine hundred and Three (1903) by and between Dr. Lewis A. Griffith, of Prince George's County, in the State of Maryland, Executor of Alfred Wilmer Ball late of Prince George's County, Maryland, deceased of the first part and William W. Stewart of Washington City in the District of Columbia, party of the second part.

Whereas, a certain Alfred Wilmer Ball late of the said County and State as aforesaid, on the 4th day of June in the year 1903 by his power of Attorney duly executed acknowledged and recorded among the land records of Prince George's County, did constitute and appoint Dr. Lewis A. Griffith of the said County and State, as his true and lawful Attorney for him and in his name to negotiate the sale of the real estate hereinafter described, and the said Lewis A. Griffith on the fifth (5th) day of June 1903, did negotiate the sale of the same with the said party of the second part, at and for the sum of Forty dollars per acre, (\$40) and executed on behalf of the said Alfred Wilmer Ball a stipulation or Agreement in writing with the said party of the second part, which said Agreement is under seal, signed by the said Lewis A. Griffith, as Attorney aforesaid and by the said William W. Stewart, the same being of record among the land records of Prince George's County, Maryland as of record will appear by reference to the same.

And whereas the said Alfred Wilmer Ball, before the day on which the proper deeds of conveyance of the said property and real estate from him to the said Stewart party of the second part, died  
44 and departed this life, having died November 6, 1903; and the completion of the said Agreement of sale was to be carried out and completed on November 7, 1903 but the said Alfred Wilmer Ball had in the meantime executed his Last will and Testament in

due legal form and formality in which he nominated and appointed the said Dr. Lewis A. Griffith to be the Sole Executor of his said last will and Testament, and the said Dr. L. A. Griffith has duly probated the said Will in the Office of the Register of Wills of Prince George's — and the same is of record in the said office.

And Whereas, the said Lewis A. Griffith, after duly qualifying as the legal Executor of the last will and testament of the said Ball, deceased did on the seventeenth (17th) day of November in the year 1903 aforesaid file his petition in the Orphans' Court of Prince George's County in which he recited the said sale by him as Attorney for the said Alfred W. Ball of the said property hereinafter described and that said Ball had departed this life testate, leaving him as Executor of his last will and Testament, and without having conveyed the said property to the said William W. Stewart, party of the second part, and asking the Court to pass an order authorizing him as Executor of the said Alfred Wilmer Ball, to execute acknowledge and deliver to the said William W. Stewart of the second part a Deed of Conveyance of the said property, being the property hereinafter mentioned and described.

And Whereas the said Court did on the said 17th day of November 1903, by its order passed on said date, authorize direct and empower the said Lewis A. Griffith as said Executor to convey the said property to the said William W. Stewart, party of the second part, upon the payment of the residue of the unpaid instalment of purchase money as agreed upon in the said agreement under seal, and the securing the  
45      payment of the deferred portion or instalments of the said purchase money to wit the one half of the said total purchase money for the said land at forty dollars (\$40) per acre, by the execution of the five promissory notes of the said William W. Stewart drawn to the order of the said Lewis A. Griffith, Executor of the said Alfred Wilmer Ball and payable in one, two, three, four and five years from date with interest payable — annually.

And whereas the said Lewis A. Griffith as executor of the said Alfred Wilmer Ball, deceased, for the purpose of complying with and carrying out the said order of the said Orphans' Court in the premises as passed is willing to execute this indenture.

Now this indenture witnesseth, that the said Lewis A. Griffith as Executor of the last Will and Testament of the said Alfred Wilmer Ball, as aforesaid, for and in consideration of the premises as aforesaid, and the further consideration of the payment to him of the purchase money for the said land as agreed upon the — by him as Attorney for the said Alfred Wilmer Ball, and said W. W. Stewart by said written agreement under seal, to wit the sum of — Thousand and — hundred dollars and — cents (\$—) the receipt of which is hereby acknowledged at and before the sealing and delivery of these presents, and the execution by the said W. W. Stewart of the said mortgage on the said hereinafter mentioned land, securing the said five notes for the deferred payments of purchase money for said land, the said Lewis A. Griffith as Executor of the Last Will and Testament of Alfred Wilmer Ball, doth grant, release confirm and convey unto the said William W. Stewart, his heirs and as-

signs forever in fee simple, all the following described real estate and premises situated near Meadows Post Office, Prince George's County, Maryland, being the Ninth Election District of said county and described by metes and bounds courses and distances as per Plat of William J. Latimer Surveyor, made in December 1903, being a part of tracts of land called "Child's Portion" part of "Crotch Hall," and "Addition to Crotch Hall," or by what soever name or names the same may be called or known. Beginning for the same at a stake on the north side of the Main road leading from Camp Springs to "Centerville" (Meadows) said stake standing South One degree East 13 Ps, from a stone the beginning of "Child's Portion" and with a part of the first line thereof, (1) S. 1 deg., E. 77 and  $\frac{1}{2}$  Ps, to a stone and Oak tree, at the N. E. corner of Jesse Alfred Osborne's estate and with the said estate, (2) S. 74 and  $\frac{1}{2}$  degs., W. 121 and  $\frac{2}{5}$  Ps, to a stone, (3) S. 12 degs, E. 63 and  $\frac{9}{10}$  Ps, to a stone at the N. E. corner of John A. Frasier's estate, and with (4) S. 88 and  $\frac{3}{4}$  degs, W. 102 Ps, to a stone at the N. E. corner of Col. Magruder's estate, and (5) S. 40 and  $\frac{3}{4}$  degs, W. 20 and  $\frac{1}{4}$  Ps, to a stone, (6) N. 51 degs, W. 78 and  $\frac{4}{5}$  Ps, to a Cedar tree, (7) N. 3 and  $\frac{1}{2}$  degs, W. 96 and  $\frac{3}{4}$  Ps, to a pebble-stone, (8) N. 64 and  $\frac{5}{8}$  degs, W. 17 and  $\frac{4}{5}$  Ps, to a stone on the west side of a Private road, the S. E. corner of George Mayhew's estate, and with the said estate along the western side of said private road, (9) N. 30 and  $\frac{3}{4}$  degs, E. 10 Ps, (10) N. 16 and  $\frac{3}{4}$  degs, E. 8 Ps, (11) N. 9 and  $\frac{1}{4}$  degs, E. 8 Ps, (12) N.  $\frac{3}{4}$  degs, W. 3 and  $\frac{1}{5}$  Ps, (13) N. 19 degs, W. 16 Ps, (14) N. 8 and  $\frac{1}{4}$  degs, West 10 and  $\frac{9}{25}$  Perches to the center of the main road, leading from Camp Springs to "Centerville," and with the said road, (15) N. 73 and  $\frac{3}{4}$  degs, E. 25 and  $\frac{4}{5}$  Ps, to a Stone on the North side of a Bound of Charles F. Calvert's estate (16) N. 84 and  $\frac{3}{4}$  degs, E. 18 and  $\frac{1}{5}$  Ps, to an Oak Tree the N. W. corner of Susanna Mayhew's 2 acre Lot, thence leaving said — and running with, said Lot (17) S. 14 and  $\frac{1}{4}$  degrees, W. 27 and  $\frac{1}{4}$  Ps, (18) N. 84 and  $\frac{3}{4}$  degrees, E. 12 and  $\frac{17}{25}$  Ps, (19) N. 14 and  $\frac{1}{4}$  degs, E. 27 and  $\frac{1}{4}$  ps, to the Center of the aforesaid Main road, (20) N. 84  $\frac{3}{4}$  degs, E. 11 and  $\frac{3}{5}$  Ps, (21) S. 87 and  $\frac{3}{4}$  degs, E. 28 and  $\frac{2}{5}$  Ps, (22) N. 89 degs, E. 2 and  $\frac{2}{3}$  rds Ps, to the N. W. corner of Albert Richardson's Lot, thence leaving the said road and running with the said Lot, (23) S. 18 and  $\frac{3}{4}$  degs, W. 27 and  $\frac{1}{4}$  Ps, to a stone. (NOTE.—At 1 and  $\frac{1}{5}$  ps, a Stone on South side of road) (24) N. 89 degs, E. 25 and  $\frac{9}{25}$  Ps, to the S. E. corner of James Richardson's Lot, and with the East line thereof (25) N. 18 and  $\frac{3}{4}$  degs, E. 27 and  $\frac{1}{4}$  Ps, to a Stone and Oak tree on the North side of the aforesaid Main road, (26) S. 81 and  $\frac{3}{8}$  degs, E. 23 and  $\frac{18}{25}$  Ps, (27) North 86 and  $\frac{3}{4}$  degs, E. 34 Ps, (28) N. 79 and  $\frac{3}{4}$  degs, East 18 Ps, (29) N. 73 and  $\frac{3}{4}$  degs, East 20 Ps, (30) S. 74 and  $\frac{1}{4}$  degs, E. 50 and  $\frac{1}{2}$  Ps, (31) S. 62 and  $\frac{3}{4}$  degs East 37 Perches to the Beginning containing Two Hundred and Eighty-eight (288) and two-thirds acres of land (288 and  $\frac{2}{3}$  rds) as Surveyed.

Being the same land devised to Alfred Wilmer Ball by Henry J.



Ball by his Last will and Testament dated October 1st, 1875 and probated and recorded in the Office of the Register of Wills of Prince George's County Maryland in Will Record No. 1 W. A. J. Jr. at folio 117.

Together with the building and improvements thereupon made or being and all the rights ways, waters, privileges, and appurtenances and advantages to the same belonging or appertaining.

To have and to hold, the same unto the proper use and benefit of the said William W. Stewart party of the second part, his heirs and assigns forever, free clear and forever discharged of all claims or demands of the said Alfred Wilmer Ball or of his estate or those claiming or to claim the same by from under or through him her or them or either or any of them.

And the said Lewis A. Griffith as Executor of the said estate of the said Alfred Wilmer Ball deceased doth further covenant with the said William W. Stewart, his heirs and assigns, that he will warrant specially the property and estate hereby granted and conveyed and that he will execute all such other and further assurances of the said land and premises for the more perfect enjoyment thereof, by the said William W. Stewart his heirs and assigns, as may be requisite at the proper cost of the said William W. Stewart his heirs and assigns.

\_\_\_\_\_, [SEAL.]  
*Executor of the Last Will and Testament  
 of Alfred Wilmer Ball, Deceased.*

Witness My hand and seal.

Test:  
 \_\_\_\_\_.

STATE OF MARYLAND, *Prince George's County, sc:*

I hereby certify that on this — day of December in the year 1903 before me the Subscriber a Justice of the Peace of the State of Maryland, in and for Prince George's County, personally appeared

Dr. Lewis A. Griffith, Executor of the Last Will and Testament of Alfred Wilmer Ball, late of Prince George's County, Maryland deceased, and he did acknowledge the foregoing deed or indenture to be his act and Deed. Acknowledged before,

\_\_\_\_\_,  
*Justice of the Peace.*



50

COMPLAINANT'S EXHIBIT A<sup>7</sup>.

Filed February 15, 1904.

Abstract of title of 288 acres of land situated near the Meadows Post-Office, Prince George's County, Maryland, called and known by the names of "Crotch Hall" "The Child's Portion," The Joint Enlargement of Crotch Hall, etc., or by whatsoever name or names the same may be called or known, being the same property sold by Alfred Wilmer Ball, late of Prince George's County, Maryland, to Dr. W. W. Stewart.

*Opinion.*

I hereby certify that I have continued the said title down to the present time since the last abstract of the title furnished and I am still of the opinion that Dr. Lewis A. Griffith, as Executor of the Last will and Testament of said Alfred Wilmer Ball, deceased, can give to the said William W. Stewart or his assigns a good, clear free and unencumbered title to the said property, free from all claims or liens or questions of any kind.

JOSEPH K. ROBERTS,  
*Attorney at Law, Upper Marlboro, Md.*

Feb. 9, 1904.

51

COMPLAINANT'S EXHIBIT A<sup>8</sup>.

Filed February 15, 1904.

STATE OF MARYLAND, *Prince George's County, To wit:*

I, Samuel J. Fowler of Prince George's County, State of Maryland, do hereby swear that to the best of my knowledge and belief that Elinor Ball wife of the late Henry Jackson Ball has been dead for the period of at least 30 years. That she died at her home near Centerville and that she has been dead for over 30 years to my certain knowledge.

Sign here.

S. S. FOWLER.

Subscribed and sworn to by the above named Justice of The Peace before me the subscriber a Justice of The Peace of the State of Maryland, in and for Prince George's County, this 14th day of January 1904.

[SEAL.]

JAMES E. SEARS,  
*Justice of the Peace.*

STATE OF MARYLAND, *Prince George's County, set:*

I hereby certify that James E. Sears, Esquire, before whom the annexed affidavits were made, and who thereunto subscribed his

name, was at the time of so doing a Justice of the Peace of the State of Maryland, in and for Prince George's County, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the handwriting of the said Justice and verily believe the signature to be his genuine signature.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Prince George's County, this 14th day of January A. D. 1904.

[SEAL.]

BENJ. D. STEPHEN,

*Clerk of the Circuit Court for Prince George's County.*

STATE OF MARYLAND, *Prince George's County, To wit:*

I, J. T. B. Suit & of Prince George's County in the said State of Maryland, do hereby swear that to the best of my knowledge and belief that Elinor Ball widow of Henry Jackson Ball, deceased, has been dead for the period of thirty years. That she died at her home near Centerville, in said county of Prince George's in said State.

Sign here.

J. T. B. SUIT.

Subscribed and sworn to before me the Subscriber a Justice of the Peace of the said State of Maryland in and for Prince George's County, this 14th day of January 1904.

[SEAL.]

JAMES E. SEARS,

*Justice of the Peace.*

53

COMPLAINANT'S EXHIBIT A<sup>o</sup>.

Filed February 15, 1904.

This mortgage, made this — day of — in the year one thousand nine hundred and —, by and between William W. Stewart and Blanch Stewart, his wife, of Washington City in the District of Columbia, Mortgagors, parties of the first part, and Dr. Lewis A. Griffith, Executor of the Last Will and Testament of Alfred Wilmer Ball, late of Prince George's County, Maryland, of said Prince George's County, Maryland, party of the second part:

Whereas, the said William W. Stewart by virtue of a certain agreement executed by him with said Lewis A. Griffith Attorney under Power of Attorney from Alfred W. Ball, dated June 5, 1903 and recorded among the land records of Prince George's County Maryland (the said Alfred W. Ball since the execution of the said Power of Attorney and since the said Agreement was executed, having departed this life leaving a will in which he left the said Lewis A. Griffith as his Executor, the said Lewis A. Griffith under said will, having duly qualified, as Executor of the same), stands justly indebted unto the said Lewis A. Griffith as Executor aforesaid in the full and just sum of Five Thousand seven hundred and seventy three (\$5773) being the one-half deferred payment for the land here-

inafter described and being so indebted as aforesaid in pursuance of the said written agreement has made and passed to the said Dr. Lewis A. Griffith Executor as aforesaid his five (5) certain promissory notes drawn payable to the order of the said Lewis A. Griffith

54      Executor, as aforesaid, each note being for the sum of Eleven hundred and fifty-four Dollars and sixty cents (\$1154.60) and payable in one (1) two (2) three (3) four (4) and five (5) years from date with interest payable annually, said notes bearing even date and wishing to better secure the punctual payment of said notes by the execution of this Mortgage, which was a condition precedent to the making of said notes.

Now, this Mortgage Witnesseth, that in consideration of the premises, and of the sum of Ten Dollars (\$10), the said parties of the first part do grant unto the said party, of the second part, in fee simple, all those pieces or parcels of ground situate, lying and being in The Ninth Election District of Prince George's County, State of Maryland, and described as follows, to wit:

All those tracts of land called "Child's Portion" "Crotch Hall" "Addition to Crotch Hall" situated as aforesaid, being the property of which a certain Alfred Wilmer Ball died seized and possessed in November 6, 1903, and fully described by metes and bounds course and distances in a deed from Dr. Lewis A. Griffith Executor of Alfred Wilmer Ball's Last will and Testament bearing even date herewith, and intended for record among the land records of Prince George's County, Maryland prior to this Mortgage, the said land having been surveyed out and platted by William J. Latimer County Surveyor of Prince George's County, in December 1903, the same as per the said Survey and Plat and by the said Deed of Conveyance above mentioned containing Two hundred and eighty-eight and 2/3rds acres of land.

Together with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

55      To have and to hold the aforesaid parcel of ground and premises unto and to the proper use and benefit of the party of the second part, his heirs successors and assigns forever.

Provided, that if the said William W. Stewart, his heirs, executors, administrators or assigns, shall pay or cause to be paid the aforesaid notes, according to the tenor thereof, and shall perform all the covenants herein on his or their part to be performed, then this Mortgage shall be void.

And it is agreed that, until default be made in the premises, the parties of the first part shall possess the aforesaid property, upon paying, in the meantime, all taxes and assessments, public dues and charges of every kind, levied or assessed, or to be levied or assessed, on said hereby mortgaged property; which taxes, assessments, public dues, charges, mortgage debt and interest the said William W. Stewart, for himself and for his, heirs, executors, administrators and assigns, do hereby covenant to pay when legally demandable. But if default be made in payment of said money or the interest thereon to accrue, or any part of either one of them at the time

limited for the payment of the same, or in any agreement, covenant or condition of this mortgage, then the entire mortgage debt shall be deemed due and demandable; and it shall be lawful for the said Dr. Lewis A. Griffith, Executor of Alfred W. Ball, his successors, heirs and assigns or Joseph K. Roberts, his or their attorney or agent, at any time after such default, to sell the property hereby mortgaged or so much thereof as may be necessary to satisfy and pay said debt, interest and all costs incurred in making such sale, and to

56 grant and convey the said property to the purchaser or purchasers thereof, his, her, or their heirs or assigns; and which sale shall be made in manner following, viz: upon giving twenty days' notice of the time, place, manner and terms of sale in some newspaper printed in Prince George's County, Maryland, which time, place, manner and terms of sale shall be fixed by the party or parties selling; and in the event of a sale of said property under the powers hereby granted, the proceeds arising from such sale to apply, First, to the payment of all expenses incident to such sale, including all taxes assessed on the property hereby mortgaged, overdue and paid by the mortgagee or holder of this Mortgage, and commissions to the party or parties making sale of said property equal to the commissions allowed trustees for making sale of property by virtue of a decree of the Circuit Court for Prince George's County, sitting in Equity; Secondly, to the payment of all claims of the said mortgagee, his personal representatives and assigns under this Mortgage, whether the same shall have been matured or not, and the surplus, if any, shall be paid to the said mortgagors his or their personal representatives or assigns, or to whoever may be entitled to the same.

And it is further agreed, that if the property aforesaid shall be advertised for sale and not sold under the provisions of this Mortgage, then the party or parties rightfully so advertising the same shall be entitled to one-half the commission above provided, computed on the amount of the debt hereby secured and remaining unpaid, expenses of advertisement, and other legal costs.

And the said William W. Stewart for himself, and for his heirs, executors, administrators and assigns, do hereby covenant to insure, and pending the existence of this Mortgage to keep insured, 57 the improvements on the hereby mortgaged land to the amount of at least      Thousand Dollars, and to cause the policy, to be effected thereon, to be so framed or indorsed as, in case of fire, to inure to the benefit of the said Mortgagee, his personal representatives and assigns, to the extent of his or their lien or claim hereunder; and further covenants that he will warrant specially the property hereby conveyed.

Witness our hand- and seal-

Test:

\_\_\_\_\_. [SEAL.]  
\_\_\_\_\_. [SEAL.]

DISTRICT OF COLUMBIA, ——— *To wit*, ss:

I hereby certify that on this — day of — in the year one thousand nine hundred and — before the subscriber, a Notary Public in and for the said District of Columbia, aforesaid, personally appeared William W. Stewart and Blanch Stewart, his wife, and each acknowledged the foregoing Mortgage to be their separate act.

Witness my hand and official seal.

———, ss:

I hereby certify that on this — day of — in the year one thousand nine hundred and — before the subscriber, a — in and for — aforesaid, personally appeared — the within-named mortgagee, and made — in due form of law, that the consideration mentioned in the foregoing Mortgage is true and *bona fide*, as therein set forth; and also made — that he has not required the mortgagor — agent or attorney, or any person for the said mortgagor, to pay the tax levied upon the interest covenanted to be paid, in advance, nor will he require the same to be paid by the mortgagor or any person for h- during the existence of this Mortgage.

Witness my hand and official seal.

#### *Assignment.*

— hereby assign the within mortgage to —.

Witness my hand and seal this — day of —, 190—.

Test:

———. [SEAL.]

———, ss:

I hereby certify that on this — day of — in the year one thousand nine hundred and —, before the subscriber, a — in and for — aforesaid, personally appeared —, above-named assignee, and made oath that he has not required the mortgagor, h- agent or attorney, or any person for the said mortgagor, to pay the tax levied upon the interest covenanted to be paid, in advance, nor will he require the same to be paid by the mortgagor or any person for h- during the existence of this Mortgage.

Witness my hand and official seal.

59

#### *Release.*

— hereby release the within Mortgage.

Witness my hand and seal this — day of — 190—.

Test:

———. [SEAL.]

60

*Demurrer of Defendant.*

Filed April 5, 1904.

In the Supreme Court of the District of Columbia.

In Equity. No. 24484.

LEWIS A. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

The demurrer of the defendant, William W. Stewart, to the bill of complaint of Lewis A. Griffith against this defendant exhibited.

This defendant by protestation, not confessing or acknowledging all, or any of the matters and things in the said Bill of Complaint to be true in manner and form, as the same are therein set forth doth demur thereto and for causes of demurrer shows:

That the said complainant hath not, in and by his said Bill, stated such a case as doth or ought to entitle him to any such discovery, accounting or relief as is thereby sought and prayed for, from or against this defendant.

Wherefore, and for divers other errors and imperfections this defendant demands the judgment of this Court, whether he shall be compelled to make any further or other answer to the said Bill, or any of the matters and things therein contained; and prays to be hence dismissed with his reasonable costs in this behalf sustained.

E. H. THOMAS,  
*Solicitor for Defendant.*

I hereby certify that in my opinion the above demurrer is well founded in law.

E. H. THOMAS,  
*Solicitor for Defendant.*

61 DISTRICT OF COLUMBIA, ss:

I, William W. Stewart, the above named defendant, on oath say that the above demurrer is not interposed for delay.

WM. W. STEWART.

Subscribed and sworn to before me this fourth day of April, 1904.

[SEAL.]

M. A. SCHEELE,  
*Notary Public, D. C.*

62

*Order Overruling Demurrer, &c.*

Filed July 7, 1904.

In the Supreme Court of the District of Columbia.

Equity. No. 24484.

LEWIS A. GRIFFITH

*vs.*

WILLIAM W. STEWART.

This cause coming on to be heard on the demurrer of the defendant Stewart to the Bill of Complaint was argued by Counsel and submitted to the Court. Thereupon it is by the Court this 7th day of July, 1904, ordered, that said demurrer be and the same is hereby overruled with leave to the defendant to answer in twenty days as he may be advised.

THOS. H. ANDERSON, *Justice.**Opinion.*

Filed October 29, 1906.

Equity. No. 24484.

GRIFFITH

*vs.*

STEWART.

This case comes up upon demurrer by the defendant to the bill of complaint. The bill is one for specific performance.

Complainant sues as executor of Alfred W. Ball, deceased. The bill sets up that on June 4, 1903, the decedent entered into an agreement with Griffith in his individual capacity, whereby the latter was appointed and constituted agent and attorney for the decedent "*to negotiate and sell*" certain real estate. This averment of the bill,

63 however, is not borne out by the terms of the agreement itself which is filed as an exhibit and prayed to be read as a part of the bill. Griffith was only constituted by that agreement or power of attorney agent or attorney "*to negotiate for the sale and transfer*"—not to negotiate *and sell*. Said agreement or power of attorney contained (among others) the following agreement on the part of the decedent Ball:

"I also agree to sign the contract in writing ratifying approving of the sale to be made of the said real estate, provided the sum of four hundred dollars, be paid to me, it being also understood and agreed that the sale shall be consummated within 10 days from date of signing contract."



On June 5, 1903, a contract was entered into between Griffith "duly authorized agent and attorney under a certain power of attorney from Alfred W. Ball" and the defendant Stewart, reciting that Griffith had been paid by Stewart \$500 as part purchase price of the real estate, that Griffith as the agent and duly authorized attorney of Alfred W. Ball agrees to convey by proper fee simple deed a clear title to the property duly executed by the said Ball, upon further payments and conditions, namely, that the balance of the first one-half of the purchase price, at the rate of \$40 per acre, is to be paid to the party of the first part on the 7th day of November, 1903, and the remaining one-half of the total purchase price is to be divided into five equal payment notes secured by mortgage on the property, &c., that the taxes for 1903 are to be paid one-half by Ball and one-half by Stewart, and that, should the remainder of the first half of the purchase price be not paid on the 7th day of November, then the said \$500 so paid to said Griffith is to be forfeited and the contract of sale and conveyance to be null and void and of no effect, otherwise remain and be in full force.

64 The bill further alleges that, after securing the aforesaid power of attorney of June 4, 1903, Griffith proceeded to effect a sale of the property and "with the knowledge of Alfred W. Ball, aforesaid, now deceased, and with his approval, in pursuance of and under the authority and power vested in complainant by Alfred W. Ball *by the power of attorney herein referred to,*" Griffith entered into the said agreement of June 5th with defendant Stewart. The bill also alleges that Alfred W. Ball gave his assent to the making of said contract of sale both prior to and after the conclusion of the same, and approved ratified and confirmed the same and stood ready at all times to convey a good fee simple title free and clear of all liens, &c.; that under and by virtue of the terms of the contract the defendant Stewart paid one-half of the taxes on said land, the other half being paid by Alfred W. Ball *or others for him and on his behalf.*

It is further more alleged in the bill that Alfred W. Ball died on Nov. 6, 1903, leaving a will in which Griffith was named as executor and empowered to sell his real estate at public auction. Griffith requested the Probate Court in Maryland to authorize the conveyance of title to the real estate here involved to Stewart under the contract, and an order was passed accordingly. Griffith presented deeds, &c., to Stewart to close the transaction in December, 1903, but Stewart said that he could not close because Griffith was powerless to give him a good title, that he did not regard any forfeiture as having taken place or that the contract was at an end, but that he was willing to carry out his part of the contract provided a good title could be furnished him, and thereupon Stewart and Griffith agreed upon J. K. Roberts as a reputable title examiner and lawyer to make a further examination and report upon the title, which report was to be accepted, and said report was made showing that a good title could be conveyed, but Stewart refused to carry out his contract.

*Conclusions.*

The following conclusions may be stated in this case:

1. That under the terms of the power of attorney of June 4, 1904, the complainant Griffith had no authority to enter into any binding contract of sale, his authority being limited to the *negotiation for sale* (Jones v. Holliday, 2 App.: Cas. (D. C.) 282, 287). Ball said in the power of attorney that *he himself* would "sign the contract in writing ratifying and approving of the sale" which Griffith might negotiate, provided:

- (a) A price of \$35 an acre be secured;
- (b) The sum of \$400 "be paid to me" (Ball); and
- (c) The sale be consummated within 10 days from date of signing contract.

It appears from the bill of complaint that Griffith did succeed in procuring a party willing to give \$35, in fact \$40 an acre for the property, but there is nothing whatever to show that the other two requirements were complied with. On the contrary, instead of \$400 being paid to Ball, \$500 was paid to Griffith, and, instead of the sale being agreed to be consummated within 10 days from date of signing contract, it was not to be consummated for five months viz. Nov.

7th. Furthermore, instead of having Ball sign the contract, Griffith did so himself, and provided in it that the remainder of the  
66 first half of the purchase money should be paid to himself as agent for Ball.

It is true that the bill of complaint says that Griffith proceeded to effect said sale "with the knowledge of Alfred W. Ball, under the authority and power vested in complainant by Alfred W. Ball," but this clause is immediately followed by the further clause "by the power of attorney herein referred to," and the power of attorney herein referred to did not give him any such authority.

2. That, unless the contract entered into between Stewart and Griffith as agent for Ball was duly ratified by Ball himself in such manner as to make the same mutually binding, the contract can not be enforced in a court of equity. If, however, such ratification was had, there can be no question but that the contract is enforceable and that a good title can be furnished to Stewart.

The allegation of the bill that, in pursuance of said contract, one-half of the taxes on the property for the year 1903 was paid by Alfred W. Ball or others for him and on his behalf is in the alternative, and can not be said to establish a ratification by *acts*.

It is, however, distinctly alleged in the bill that Ball in his lifetime approved, ratified and confirmed this contract, although nothing is said about the ratification being in writing, and it is to be gathered from the allegations of the bill generally that such ratification was not in writing. What is the rule of law governing this question? Is it required under the statute of frauds that such ratification shall be in writing?

The statute of frauds, although by its provisions going very  
67 far toward the suppression of fraud by requiring the evidence of certain transactions to be in writing, has yet, according

to settled authority, contented itself with requiring parol evidence only as to the authority of an agent to make for his principal the written evidence required by the statute. This anomaly is inherent in two different classes of cases:

(1) Where a principal *orally appoints* an agent to do the signing for him which is required by the statute;

(2) Where a principal, subsequently to the signature of an unauthorized agent, *orally ratifies* it.

Browne in his work on the Statute of Frauds, at Section 70a, says:

"The agent for signing may, in all cases enumerated in the fourth section, be appointed without writing. \* \* \*

The authority in cases of contracts, however, may be given subsequently to the signature, by parol ratification of it."

and cites a number of cases in support of the propositions so laid down.

In the case of *MacLean v. Dunn and Watt*, 4 Bing. 722, the Court of Common Pleas of England (speaking by Best C. J.) said:

"It has been argued, that the subsequent adoption of the contract by Dunn will not take this case out of the operation of the statute of frauds; and it has been insisted, that the agent should have his authority at the time the contract is entered into. If such had been the intention of the legislature, it would have been expressed more clearly; but the statute only requires some note or memorandum in writing, to be signed by the party to be charged, or *his agent thereunto lawfully authorized*; leaving us to the rules of common law, as to the mode in which the agent is to receive his authority. Now, in all other cases, a subsequent sanction is considered the same thing in effect as assent at the time \* \* \* and in my opinion, the subsequent sanction of a contract signed by an agent, takes it out

68 of the operation of the statute more satisfactorily than an authority given before-hand. Where the authority is given before-hand, the party must trust his agent; if it be given subsequently to the contract, the party knows that all has been done according to his wishes. \* \* \* Under the statute of frauds the ratification of the principal relates back to the time when the agent made the contract."

See also Fry on Specific Performance of Contracts.  
Secs. 354 & 355.

In view of these authorities, it is apparent that a ratification of an agent's unauthorized act is not required under the statute of frauds to be in writing, and therefore that the allegation of ratification in the bill of complaint in this case is sufficient. It is true that in the power of attorney providing for the terms of the sale to be negotiated by Griffith thereunder, it is stated that the contract of sale in writing is to be signed by Ball, but, certainly, whatever may be the evidential value of that instrument as bearing upon the probability of Ball's having orally ratified a sale upon different terms negotiated by Griffith, it still follows as a matter of law that he had *the power* to verbally ratify such sale. It therefore follows that inasmuch as the

bill *expressly avers that*, although the sale made by Griffith was, in certain respects upon different terms than those named in his power of attorney from Ball (the owner of the property), that Ball, nevertheless, thereafter fully ratified and confirmed the same, it becomes the duty of the Court in this state of the pleadings to overrule the demurrer.

THOS. H. ANDERSON, *Justice*.

69

*Answer.*

Filed August 5, 1904.

In the Supreme Court of the District of Columbia.

Equity. No. 24484.

LEWIS A. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

To the Supreme Court of the District of Columbia:

This defendant now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

First. This defendant admits that complainant is a citizen of the United States but he is advised that complainant has no right to bring or maintain his said Bill as executor of the estate of said Alfred W. Ball deceased against him and therefore so avers.

Second. The defendant admits that he is a citizen of the United States and a resident of the District of Columbia but he denies the right of the complainant as Executor as aforesaid or otherwise to maintain any suit in equity and obtain a decree against him in his own right respecting the matters contained in said Bill. The defendant says that he executed the said option contract named in the proceedings solely for and in behalf of the Maryland Oil and Development Company, a corporation organized under the laws of

70 the State of Delaware having its principal office in the District of Columbia, of which Company he then was the President; that the said Ball mentioned in said Bill and the complainant both so well knew before and at the time of the execution thereof. That the consideration paid to said Griffith as agent of said Ball was of the money of said corporation as well as the money used to pay one-half of the taxes hereinafter mentioned as the said Complainant well knew. This defendant to the knowledge of said Ball and Griffith made the said option contract in his name for convenience merely and never has had any real interest or title under said contract or otherwise, and this defendant prays that said corporation

be made a party hereto and says that said corporation is a proper and necessary party to this cause. This defendant further answering says that the said contract as he understood and is advised became null and void on the 7th day of November, 1903, both by the death of said Ball and the terms of said contract which provides that in case the remainder of the first half of the purchase price be not paid on November 7th, 1903, then the said \$500. so paid to the said L. A. Griffith is to be forfeited and the Contract of Sale and Conveyance to be null and void and of no effect in law otherwise to be and remain in full force, and defendant says that if prior to the death of said Ball there was ever any mutual binding agreement by him and complainant or said Ball to purchase any of said land the complainant regarding said contract as null and void before this suit and before the tender and performance alleged in said Bill, declined

and refused to carry out the said agreement, to wit:—November 10, 1903, and declared that the said matter was ended; and that before any attempted revival thereof this defendant to wit: on November 23, 1903, as the Complainant theretofore knew, acquiesced in the said declination, refusal and abandonment and notified Complainant that he assumed no personal liability regarding the same, whereby the said alleged contract became abrogated by the mutual consent of the parties of this suit.

Third. This defendant does not admit the allegations of the third paragraph of said bill but demands strict proof thereof, nor does this defendant comprehend how the said Alfred W. Ball could have been seized "as of his own sole and separate estate" as alleged in the land mentioned. This defendant denies that said Ball ever was in fact as alleged seized in fee simple of said land or any part thereof clear of incumbrances. This defendant does not admit the identity of the land alleged to be contracted for with that mentioned in this suit nor the sufficiency of the descriptions, area and boundaries thereof.

Fourth. This defendant does not admit the allegations of the fourth paragraph of said bill but demands strict proof thereof. This defendant says that whether the said Ball was desirous of selling said 240 acres or not, this defendant never desired to own the same and never desired or intended to purchase the same for himself or contract absolutely so to do as said complainant well knew on the 4th day of June, 1903.

Fifth. This defendant does not admit the allegations of the fifth paragraph of said bill, but demands strict proof thereof.

6th and 6th  $\frac{1}{2}$ . This defendant does not admit the allegations of the 6th and 6th  $\frac{1}{2}$  paragraphs of said bill and demands strict proof thereof nor does he admit the assent of said Ball to the making of said alleged contract nor his subsequent approval, ratification or confirmation thereof either verbally or by sufficient writing within the statute of frauds.

This defendant denies that he paid one-half of the taxes on said land or any part thereof, pursuant to any personal obligation which this defendant entered into for himself, and he is advised that if such payment was in fact made it was made under a void agreement

without consideration and the same does not constitute such performance of the pretended agreement within the statute of frauds as entitles the complainant to the relief prayed against him.

Further answering this defendant says that there was no survey of the said land whatever it may be, during the lifetime of said Ball nor until a considerable time after his death and after the period for the completion of said option contract had expired.

Seventh. This defendant admits the death of said Ball but says he died before November 6, 1903, and he is advised that the death of said Ball terminated all interest and authority of said Griffith as his agent or attorney, and as there was not either at the time of the death of said Ball, or thereafter any binding contract between them for the purchase or sale of any land whatever, the pretended contract became, was and is null and void, nor was the same revived or made valid by any of the pretended verbal agreements set forth in said

73 paragraph as to all of which this defendant expressly pleads the statute of frauds as a defense. This defendant does not know whether said Ball made any will and cannot admit such to be the fact and if the same be material demands strict proof thereof. This defendant is advised that if said will was in fact made and the provisions thereof be correctly set forth by the exhibit referred to in said paragraph of said Bill, the said will dated July 10, 1903, and which took effect on the death of the testator to wit November 6, 1903, by its own terms repudiated said pretended contract of sale between said Griffith or said Ball and this defendant, and gave no authority to the complainant as Executor or otherwise to make any new contract of sale or to carry out the alleged contract of sale as executor, agent or otherwise, other than by the method pointed out, directed and required by said will, viz: to sell the real estate of the testator "at public sale after one month's notice by due publication of said sale and of the time, place, and manner of said sale," which was never done, and this defendant is advised that the complainant thereupon became, was and is without power or authority to convey any part of said real estate to this defendant. Respecting the pretended proceedings in the Orphans Court of Prince George's County, Maryland this defendant has no knowledge, nor was he a party thereto nor did he ever consent to the same, and this defendant does not admit them nor their validity and he is advised the same are wholly irrelevant, immaterial and confusing to the issues in this cause, and that said court was without jurisdiction to ratify said alleged contract, or to authorize complainant to execute the same, and said court was wholly without jurisdiction in the premises. This defendant here calls attention to the allusion in the said paragraph that the said Ball died on November 6, 1903, and that there-  
74 after on December 15, 1903, complainant claims authority was granted to him by said Court to tender a deed to this defendant, when by virtue of the pretended contract dated June 5, 1903, the time for closing the said sale was fixed at November 7, 1903. This defendant denies that the complainant ever tendered himself ready to perform the said pretended contract within the time fixed by the terms thereof, and he is advised, that because of such



non-performance, the complainant is not entitled to the relief prayed for. This defendant further denies that he ever employed or agreed to employ the said Roberts as his attorney, or to abide by *his* opinion of said Roberts respecting title as alleged. This defendant further answering says that the complainant did not furnish him any abstract of title but that said Roberts submitted for examination to the attorney of the said mentioned Maryland Oil and Development Company, a Corporation but not to this defendant or his attorney, an abstract of title, so called, on or about the 13th of June, 1903, of two hundred and thirty-nine (239) acres of land for the consideration of the said attorney for the said Corporation but said abstract did not show a good title to said land. The said abstract was by the said attorney for the said Oil Company to wit: December 21, 1903, returned with various objections to the description of the property and to the sufficiency of the title of said Ball, and because, as the fact is, the said abstract of the said Roberts did not show a good title in fee simple, and clear of all incumbrances of every kind and nature in said Ball. This defendant further states that the said attorney for said Corporation and said Roberts did not nor did either of them in the making of the said abstract and in their action thereon

75 act as the agents or attorneys of this defendant. This defendant further answering says that the complainant did not in the month of December, 1903, nor the 15th day of February, 1904, after the death of the said Ball, make any tender of any deed sufficient in law to convey a fee simple unincumbered title to him to said land or any part thereof. This defendant says that it is true that in December, 1903, he denied that complainant now that Alfred W. Ball was dead could convey a good title but this defendant did not express any willingness to take said land if a good title to the same could be conveyed to him. This defendant admits that he declined to make the said purchase requested by complainant and to pay him \$5,273 in addition to \$500 one half of the total sum demanded by complainant and to give his five notes for the remaining half as aforesaid, because, he had never contracted with the complainant so to do, nor had the complainant any title which he could convey, and the said sale had been abandoned by mutual consent, and because the real buyer of the property mentioned in the alleged contract dated June 5, 1902, was the corporation hereinbefore mentioned as hereinbefore stated in paragraph 2 of this answer which in fact paid the said \$500 deposit and for whom this defendant was solely acting throughout the said transaction, nor was this defendant in any manner acting for himself in respect thereto. This defendant does not admit any willingness to perform the alleged contract of sale, neither does this defendant admit that he ever expressed the opinion that the alleged contract was in force or that the said \$500 had or had not been forfeited, and as to all such matters this defendant demands strict proof. This defendant further says that he never

76 received any consideration for the making of any new contract with the complainant, nor was the same ever expressed in writing nor were the terms of the original option agree-



ment entered into by this defendant as the agent for the said corporation ever waived, modified or revived. This defendant further answering, says, that the complainant having admitted in the said bill that he had notice that this defendant was acting for the said Oil Company, this defendant reiterates the said statement that he was so in fact acting. Respecting all the alleged considerations between the parties to this suit mentioned in the said paragraph this defendant pleads the statute of frauds and he denies the same, excepting so far as he may have expressly admitted some portion thereof. Whatever the conversations were the complainant was given distinctly to understand that this defendant would not purchase any land from the complainant, but that if any purchase was made of any land, such purchase would be made for and by said corporation and not this defendant, nor did defendant name any title examiner, as alleged in the said paragraph. This defendant further answering says that the said complainant in an endeavor to extort from this defendant for more land than the parties contemplated, the extravagant sum of \$40 per acre, instead of the real value of \$8 per acre, did as hereinbefore stated on the 15th day of February, 1904, submit to the attorney for said Corporation and not to this defendant, an opinion on the title of 288 acres, but at the said time there was no contract in existence between the parties to this suit. This defendant further answering says that all matters mentioned in said paragraph not specifically answered are denied.

Ninth. This defendant admits that said Thomas stated to 77 said Ambrose that complainant could not give a good title as executor or otherwise but this defendant does not admit the other allegations of the ninth paragraph of said bill, and demands strict proof thereof neither does he admit the sufficiency of the pretended conversations to create any contract between the parties. This defendant is advised that the said pretended conversations do not create any contract between the parties to this suit, whether the said complainant is suing in his own right or as agent or executor of said Ball. This defendant denies that the said Thomas was his attorney or agent, or that he was authorized to act for him or bind him in any manner.

Tenth. Answering the tenth paragraph of said Bill defendant pleads the Statute of Frauds as defense to the whole bill and states that the complainant heretofore, on the 19th of November, 1903, by the said attorney, who made the same pretended abstract of title, entered suit against the defendant in the Circuit Court of Prince George's County, Maryland, about two months before the filing of this bill. This defendant further answering says, that he is solvent and able to respond to any judgment at law which the complainant may recover against him and that the said suit at law is still pending. This defendant is advised the complainant has a plain, adequate and complete remedy at law against him if he has any right to recover, and he is advised, and therefore avers that before proceeding with this suit, the complainant should be required to elect whether he will proceed with said action at law or with this suit, and that he will be restrained and enjoined from proceeding con-

trary to his election and he prays that the proceedings in this suit be stayed until such election is made. This defendant denies that the complaiant has at all times tendered himself ready and  
 78 willing to perform all the things and conditions required by him to be performed, as alleged.

WM. W. STEWART.

E. H. THOMAS,  
*Solicitor for Defendant.*

DISTRICT OF COLUMBIA, ss:

I, William W. Stewart, on oath say that I have read the above answer, by me subscribed, and know the contents thereof; that the matters and things therein stated on my personal knowledge are true and the matters and things therein stated on information and belief, I believe to be true.

WM. W. STEWART.

Subscribed and sworn to before me this 5th day of August, 1904.  
 [SEAL.] M. A. SCHEELE,  
*Notary Public, D. C.*

79

*Replication.*

Filed August 15, 1904.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24484.

LEWIS A. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

The complainant joins issue on the answer filed by the defendant in the above entitled cause.

CHAS. H. MERILLAT,  
 WM. E. AMBROSE,  
 GEO. R. GAITHER,  
*Attorneys for Complainant.*

80

*Transcript of Evidence.*

Filed February 14, 1907.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24484. Supreme Court Dist. of Col.

LEWIS A. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

It is hereby stipulated and agreed by Lewis A. Griffith the complainant in the above entitled cause in the Supreme Court of the

District of Columbia and by William W. Stewart the defendant in said cause, that the record of the testimony in said cause embodied in the transcript of record in said cause is, with the pleadings and exhibits submitted, the whole and entire testimony and record in said cause, and is the same, the whole and the true record on which the cause was heard in the first instance by Mr. Justice Stafford in the Supreme Court of the District of Columbia and on which the cause is to be tried and determined on appeal. This stipulation is also hereby made a part of the record on appeal in said cause.

CHARLES H. MERILLAT,

*Attorney for Complainant.*

E. H. THOMAS,

*Attorney for Defendant.*

Dr. LEWIS A. GRIFFITH, the complainant being called as a witness on the 31st day of August, 1904, testified as follows:—

81 I am a practicing physician in the town of Upper Marlboro and have been there for twenty-five years. I am Forty-nine years of age. I am the complainant in the case — for the estate of Ball against W. W. Stewart. I am the executor of Alfred W. Ball and acted as his agent in the sale of this property now in dispute to W. W. Stewart. I have known Alfred W. Ball between five and six years prior to his death. I knew of them and had seen them before but had never been on the place. I have been acquainted personally for more than five or six years. He died sometime between eleven and one o'clock on the night of the fifth or morning of the sixth of November, 1903. I was attending to James Ball during the spring of 1903 and several times during that time Alfred Ball told me he would like me to sell his place that he was then living on at Centerville for him. (Objected to as incompetent because it is a conversation between witness and a deceased person.) I do not know of anybody approaching him for the purchase of the property except what he told me. (Under objection that the same was hearsay and was incompetent as a statement between witness and Alfred W. Ball deceased the witness testified.) He merely stated to me that he had received several messages that Dr. Stewart wished to purchase the property, but that he was an illiterate man and incompetent to transact business. (Motion to strike out on ground of objection.) After he had spoken to me several times about the sale of the property I told him I could not find any sale for this property — objected to as incompetent. Mr. Leapley came

82 to me and told me that Dr. Stewart wanted to purchase this property and I told him "Very well, if Dr. Stewart wanted to purchase this property I would get from Mr. Ball a power of attorney to sell it but could not give a valid deed to the property until I had a power of attorney (Objected to as hearsay). Dr. Stewart and Mr. Leapley came to my house to see me about it and I think it was about the first part of June, 1903; about the 5th and Dr. Stewart asked me if I had the sale of the property belonging to A. W. Ball and I told him that he had asked me several times to sell it but I had not obtained a power of attorney to sell it. That was in the

forenoon. He asked me what I wanted for it and what he could buy it for and I said "you can buy it for \$40. an acre." He said "Well I will take it. Upon what terms, however?" he said. I said "Five hundred dollars cash and the balance of the one half purchase money in three months." He said I will give you \$250 cash and balance of  $\frac{1}{2}$  purchase money in 6 months. Well, I said, "I haven't any power of attorney just yet. I will see Mr. Ball before I talk with you further. He asked me when I could see him. I said I can see him today. I agreed to see Mr. Ball and meet him out at Meadows which is about half or three quarters of a mile from Mr. Ball's house that afternoon. I got the Justice of the peace after dinner and had Mr. Roberts draw the power of attorney and drove to Mr. Ball's house. This call of Stewart and Leapley was subsequent to the conversation I have related with Leapley. I would not have obtained the power of attorney, at least I had no idea of doing so because I knew then of no one who wanted to purchase it, but Dr. Stewart said he wanted to purchase the property and I went and obtained from Ball the power of attorney to sell it.

83 Q. State whether the paper I now hand you is a true copy of the power of attorney given to you by Alfred W. Ball as a result of this conversation? A. Yes, sir, I think that is a correct copy of it. I obtained that copy from Mr. Ball on the day that Dr. Stewart was out to my house to see me about the purchase of it and as soon as I had obtained it and before I could leave the house—Ball's house—why Dr. Stewart and Mr. Leapley drove up. They did not wait for me to come to Meadows. I then said to Dr. Stewart, Mr. Ball objects to less than five hundred dollars and I won't take less than five hundred dollars cash payment in the purchase of this property and the other to be paid in five months—the balance of one half of the purchase money to be paid in five months, and he said, "That is all right, Doctor. It is my property. I will take it," and I agreed with him that he should have till Monday morning to send me the five hundred dollars and we would sign the agreement, but instead of waiting until Monday he sent Mr. Thomas down on Friday. That was on Wednesday, and on Friday, the second day after, Mr. Thomas, the gentleman sitting there Mr. A. W. Thomas, came to my house, said he represented Dr. Stewart and wanted to complete the bargain made by Dr. Stewart. I told him "All right, I was ready."

Mr. MERILLAT: At this point in the record I desire to offer in evidence the original of the power of attorney from Alfred W. Ball to Dr. Griffith, concerning the sale of the land involved herein.

Said Exhibit is marked Complainant's Exhibit A-10.

Objected to because it misdescribes the property: because it does not contain any authority to the complainant in the capacity in which he sues, also because it contains no authority to make any contract of sale, also because it appears in testimony that Ball died on the fifth of November, 1903, whereby all authority as agent or otherwise of Complainant in this cause has terminated.

Mr. MERILLAT: I understand no objection is made as to the signature or anything. (Mr. Thomas: We will agree to that, you know.) The witness proceeds under interrogatories; I procured the power of attorney because Dr. Stewart told me that he wanted to buy the property and was ready to buy it as soon as I procured the power of attorney from Mr. Ball and agreed with him as to the price there in my house. This is the contract which A. W. Thomas drew up with me for the purchase of the property as the representative of W. W. Stewart. (Paper offered in evidence marked Complainant's exhibit A-11.) Objected to for want of authority therein to enter into a contract to sell: that it is in respect to a different property from that mentioned in the power of attorney and by its own terms the contract expired before the bill was filed and same does not support an action brought by an executor of Ball deceased.

(Witness continuing:) When that contract was signed Mr. Thomas delivered Dr. Stewart's check for five hundred dollars. Check offered in evidence in words and figures following:

85

WASHINGTON, D. C., *June 5th*, 1903. No. 462.

The Columbia National Bank of Washington.

\$500. Pay to the order of L. A. Griffith, Agt for A. W. Ball & Bro.  
Five Hundred Dollars.

W. W. STEWART.

Printed on left side: W. W. Stewart, Stewart Building, Cor. 6th and D Sts., N. W.

Stamped on face: Do not destroy this check. Good only for \$500. When properly indorsed. June 5, 1903. P. F. Teller. (Certified check.) Paid June 8, 1903.

#### Endorsements.

L. A. Griffith Agt for A. W. Ball & Bro.

Pay to the Cashier of Citizens National Bank, Laurel, Md., for deposit to the credit of L. A. Griffith.

Pay Traders Nat. Bank, Washington, D. C., or order Citizens National Bank of Laurel. O. N. Waters, Cashier.

Endorsements guaranteed.

Traders Nat'l Bank of Washington, June 8, 1903.

Witness continuing: This contract was given to Mr. Roberts and he had it typewritten and it was subsequently signed by Dr. Stewart himself and by me as attorney ratifying Mr. Thomas' action. Contract offered in evidence and marked Complainant's exhibit A-2. (Objected to for the reasons stated in the answer of defendant and above stated as to the contract.)

86

Mr. MERILLAT: I desire now to offer in evidence a certified copy of the will of Alfred W. Ball deceased. Marked Complainants Exhibit A-3.

Mr. THOMAS: The will being now offered objection is made to the contract on the ground that the executor is not authorized by the will to bring this suit to enforce the alleged contract and on the ground that the will repudiates the contract and directs that the property—real estate of the deceased be sold at public auction after one month's notice by due publication of the time and manner thereof.

A certified copy of the order of the Orphans Court of Prince Georges County authorizing the executor to carry out the contract was offered in evidence and marked Complainants Exhibit A-4. Objected to for the reasons set forth in the answer of the defendant and because the defendant was not a party to such proceeding and that the said court was without power or jurisdiction to make the contract on the part of defendant Stewart, against his will and without power to vary the express terms of the will.

Mr. MERILLAT: Doctor, please state whether the paper I now hand you is signed by Alfred W. Ball?

Answer. Yes, sir: He signed it in my presence.

Objection because the other party to the transaction is dead.

Mr. MERILLAT:

Question. Are you acquainted with the signature of Alfred W. Ball. Answer. Yes, sir: I have seen it a hundred times. (Under above objection renewed.) I saw him sign this paper: it is his

87 genuine signature, and I will prove it by other witnesses.

Under above objection renewed the paper is offered in evidence marked Complainant's exhibit A-12. In answer to further questions witness said: At the time of that contract Mr. Alfred W. Ball owned no property in Prince Georges County except what was included in this contract. After this contract was made James T. Ball, the brother of Alfred W. Ball, died and Alfred W. Ball came into possession of another farm about two miles below there and after the death of James T. Ball, Alfred W. Ball made his will and the real estate that he empowered the executor to sell in that referred to the farm that was gotten from James T. Ball.

(It is moved by counsel for defendant to strike out the above answer as being the opinion of the witness upon the construction of the will.)

WITNESS: He had no real estate in the county at the time the will was drawn except that farm,—that he had gotten from his brother James T. Ball who had died in July. It is from my personal knowledge of the land and the property owned by James T. Ball and as executor of James T. Ball. I was his executor also and I know it of my personal knowledge.

Mr. MERILLAT: At this point I desire to offer in evidence an exemplified copy of the last will and testament of Henry J. Ball.

Mr. THOMAS: I don't take it to be a copy. I object to it as irrelevant and immaterial.

Mr. MERILLAT: I offer it in evidence, and counsel can have the



right if they think it is incorrectly copied to make those changes. The paper is marked complainant's exhibit A-13.

Q. Where was Alfred W. Ball residing at the time of signing the power of attorney with you? A. He was residing on the property in question near Meadows and signed the contract on that property—signed the power of attorney on that property. The tract on which he resided is called as part of Crotch Hall. The burial place is on that place and about a few hundred yards from where Alfred Ball was living at the time the power of attorney was signed. At that time he had no other real estate in Prince George's County.

Q. State whether prior to the sale there was any conversation between yourself, and Dr. Stewart as to the quantity of land? A. Yes, sir. When Dr. Stewart came to my house to see about the land that day, he said: "The tract contains, I believe, about 240 acres, and I said: "I think the assessment books will show about 240 acres, but, Mr. Ball says—Alfred Ball says: "There is nearer 275 acres—and he told me so several times—than 240. Dr. Stewart said "That will be settled then by a survey. I said "We would agree to that." We could not do it otherwise, because some had been sold off and they did not know exactly about the ground. Ball said "It is nearer 275 than it would be 240" and always so stated.

Q. What, if any, conversation was there between you and Dr. Stewart as to whether or not if the tract was found to contain more than 240 acres, it would or would not make any difference with respect to the transaction?

Under objection as varying the contract the witness answered that Dr. Stewart said that he would take the tract of land and wanted the whole tract of land and wanted even the burial ground of one acre, and Ball agreed that he should even have the burial ground.

Dr. Stewart was not present when Ball made that agreement. Motion to strike out the said agreement of Ball as hearsay. Dr. Stewart said he wanted the whole tract and Ball was not willing to sell any part of it unless he sold the whole of it.

Q. What do you mean by all of the tract. A. All of the whole tract that is embraced in the property that Ball lived on and known as Crotch Hall and Ball contended that it contained nearer 275 than 240 acres.

Mr. A. W. Thomas drew the contract and after reading it over there—the question had been talked about with Dr. Stewart about an option on this place and whether they could get an option; that is, whether he could pay so much with the right of a forfeiture. I had objected to anything of that sort.

Q. What, if any, conversation occurred between yourself and Mr. Thomas with respect to the contract being declared null and void if not consummated within one hundred and fifty days, at the time, or immediately prior to the drafting of the contract? A. I said to him there at that time "what do you mean by this in here—five hundred dollars if not paid" and he told me that clause was a pro-



tection to me. I wanted to know why it was a protection to me and he said "because if he had another offer for the property and Dr. Stewart refused to comply with his terms that I could have an option and I could force him or I could make him forfeit the five hundred dollars." That was all said on the subject, and I said, "all  
90 right," and I signed the paper, and Mr. Roberts came in and witnessed the paper. There were two papers drawn up, an original and a duplicate and this is the duplicate, signed by us both. This is the copy I kept and Mr. Thomas took the other for Dr. Stewart.

Q. At the time that you went to Alfred W. Ball on his farm, and when Dr. Stewart and Mr. Leapley drove up there, what, if any, persons went out to Alfred W. Ball's farm, and if you have any personal knowledge, for what purpose did they come there? A. When I went in the house to see Mr. Ball there was a man there. I do not know—I did not know him personally. He was with a gentleman there in the neighborhood. And Ball said to me—(Mr. Thomas: I object to what Ball said to the witness. Ball is deceased and the witness is incompetent to state.)

(By MERILLAT:)

Q. Do you know apart from what Alfred W. Ball told you as to the object of the gentlemen's visit there? A. No, sir, he pointed him out and told me. That is all I know about it.

In answer to questions witness said that at the time the contract was signed they were boring for oil there and land had enhanced very much in value and property was being secured in that neighborhood by several agents representing different companies. They supposed that there was oil there. They were boring for oil on the adjoining property. I cannot say exactly the distance, but it was the adjoining property to this land. This oil property extended

91 right up to Ball's property. I do not know exactly the distance from Ball's house to what they termed the oil fields.

I have never been where the boring was, but I know about where it is, and it is not a great distance from Ball's. It was the adjoining property to Ball's property, and Dr. Stewart said to me that when he bought this property that this was the natural outlet to his property or the property down there and it was the most desirable piece of property and that they wanted it and I stated to Dr. Stewart that I had another offer—we had another offer. He said well after expending the money that had been spent there he thought he ought to be given the preference if any body offered as much money and I agreed with him that even if anybody offers as much money you shall have it. He stated to me that he wanted this property for himself and if the oil did not materialize that he intended to subdivide the property and make other use of it, but that he wanted it for himself. That conversation was at my house and subsequently at Stewart's office. He told me this at the house before any contract was signed and he told me after the contract had been signed in his office when I was talking with him here one day about

it. The witness being asked why Dr. Stewart said he ought to have the preference answered: He told me because he had expended considerable in the neighborhood and because it was the belief that oil was present and that the property had advanced. There was considerable excitement about the oil and property advanced upwards and Dr. Stewart and other persons were trying to secure options on the purchase of land in that neighborhood. In going to the place where they were boring for oil they can go right through Alfred Ball's place and it is a nearer cut than going around the other way though he could not say much of them in comparison as he never had been to where the boring went on. There is a road that does not go through his place that they can go to.

Q. Please state at whose request or requests you procured this power of attorney? A. I just stated at the request of Dr. Stewart; he took this power of attorney and would not buy until he had the power of attorney, and I gave Mr. Thomas the power of attorney and that with the contract was recorded at the court house. As to acquaintance of witness with A. W. Thomas the witness testified, I had no acquaintance with him at all. I think I had seen him once going down on the road, but I did not know him personally and knew nothing about him until he came and said he represented Dr. Stewart and produced the check of Dr. Stewart. In answer to questions as to real estate values witness said:—I am pretty well acquainted with land values down there. I have some land in Prince George's County. I have bought some and I have sold some. I do not know of any that I have bought that is any nearer to the tract in question than Upper Marlboro which is five or six miles from there. I have knowledge of sales of land in the neighborhood of this land in controversy. (After objection as to his competency as a real-estate expert.) I have a piece of land which I had forgotten when I stated about this before, that is not more than a mile or a mile and a half—well, about two miles from that place in the other direction from Meadows. I guess Mr. Ball's property is about two miles or may be a mile and three quarters from there, on the road leading to Redd's corner. It is a mile and a half from there and I think it is twenty-seven acres and unimproved, nothing on it but some pine bushes or something of that sort.

Over same objection to a question as to effect of the oil excitement. Well the oil excitement advanced the values very materially. What would I put it at as an estimate on it aside from that? Taking the whole tract as a body in that way without any oil on it I do not know that the property with that eliminated would sell for more than twenty-five dollars an acre. Thereupon the taking of testimony was adjourned until September 3, 1904, on which day the testimony of said witness was resumed in chief and he further testified in answer to questions by his counsel that prior to the time Mr. Leapley came to see me about the purchase of this property I did not know who owned this property in question—whether it was held by A. W. Ball and James T. Ball jointly or by A. W. Ball alone. After Mr. Leapley had seen me and just a day or two before Dr. Stewart came I

satisfied myself that this property belonged exclusively to A. W. Ball. Over objection and motion to strike out. I satisfied myself in that way by the deed that was given me of the father of A. W. Ball and by finding out that that was a correct copy of that deed, the deed which I presented here today. (Over objection as being hearsay.) Because I had the deed in my possession. I had found out it was correct and duly recorded in the register of wills office and by the statement of A. W. Ball and James T. Ball. Dr. Stewart up to that time had not said anything to me and I had not had any communication with him. James T. Ball and Alfred W. Ball resided on this property at Meadows together on the same place

94 ever since I knew them for over five or seven years. I will say before this (the giving of the five hundred dollar check), when Dr. Stewart came to see me he spoke of this property of the Ball brothers and when I went up and got the power of attorney it was given by A. W. Ball and that power of attorney—Mr. Stewart spoke of this in my parlor, of the Ball property or property of the Ball brothers. When I got the power of attorney from A. W. Ball I told Dr. Stewart in the presence of witnesses that I had this power of attorney and that Mr. Ball objected and I could not grant him more than five months in which to pay the balance of one half of the purchase money and five hundred dollars must be paid cash. He told me that it was all right and that he considered it his property. This is about as far as I know. He said all right. I did not show him the power of attorney and when Mr. Thomas came down and said he represented Dr. Stewart and had the check and paid the five hundred dollars and the first question he asked was where was the power of attorney and I gave it to him and his remark was "This is from A. W. Ball absolutely" and I said "Yes, sir, nobody else has any interest in it. He said "That is all right that is satisfactory entirely" and proceeded then to draw the contract. When he gave me the check he said this is the check in payment of the five hundred dollars purchase money from Dr. Stewart and it is all right. There is no trouble about that. I said it is in payment of the five hundred dollars part purchase money and it is accepted as such. My recollection is that it was drawn to L. A. Griffith, Agent for

95 A. W. Ball and Brother. I accepted it as payment of five hundred dollars on this A. W. Ball property with the assurance of Mr. Thomas that that was all right and was given in good faith for the payment of this property. Motion to strike out (p. 32). I gave him a receipt. I wrote him out a receipt and gave him a receipt for five hundred dollars as part of the purchase money of the property of A. W. Ball.

Mr. MERILLAT: I call for the production of that receipt.

Mr. THOMAS: You call for it.

Mr. MERILLAT: Will counsel produce or not produce that receipt?

Mr. THOMAS: I decline to answer your question. I do not know anything about such a receipt. I never heard of it before and I do not believe there was ever any such a receipt. Witness: Do you mean

to say I never gave such a receipt? Witness continuing in answer to questions as to the receipt: I gave him a receipt simply stating "Received of A. W. Thomas for W. W. Stewart, five hundred dollars, being a part of the purchase money of the tract of land sold by me as agent of A. W. Ball." That is the sum and substance of it.

Objection to conversation with A. W. Thomas on the ground that it must be established *aliunde* that he was the agent of Stewart before this conversation can be offered in evidence. In response to questions witness said: The contract of sale, drawn at the time the check was given, was drawn by A. W. Thomas. It was signed by me as agent for A. W. Ball and by A. W. Thomas as agent for W. W.

96 Stewart and witnessed by Joseph K. Roberts. I did not know A. W. Thomas until he presented the check of Dr. Stewart who already had told me he would send me the check between that time and Monday. Subsequently a contract was drawn between myself and Dr. Stewart and signed by both of us and I never heard of any objection that A. W. Thomas had no authority to represent him and did not represent him and I never heard of it before.

Q. Doctor, I will at this point ask you whether or not you had two powers of attorney from Alfred W. Ball? A. There were two papers drawn identical in every respect except that the power of attorney that I gave to Mr. A. W. Thomas, when he said he represented Dr. Stewart, and produced the check, was simply an authority to sell the land and in every respect identical with the power of attorney produced here except the one produced here went on to state what my commission or pay should be for the sale of the land, and the power of attorney that I had upon which I sold the property I delivered to Mr. A. W. Thomas.

Mr. MERILLAT: I call for the production of that power of attorney delivered to Mr. A. W. Thomas.

Mr. THOMAS: That is all right Mr. Merillat, you call for it.

Mr. MERILLAT: I will subpoena it if need be.

Q. What if anything was said to you prior to entering into the agreement for the sale of this land to Dr. Stewart that he was representing an oil company or that an oil Co. was interested in the matter. A. Nothing whatever was said to me on the subject of  
97 Dr. Stewart representing anybody but himself. When I was first approached by Mr. Leapley he merely told me that Dr. Stewart wished to buy the property and when Dr. Stewart came to see me he told me he wanted the property for himself and I never heard anything about an oil company and did not know anything about an oil company or oil business or transaction and did not know anything about him being connected with any such thing or anything about it.

Q. When if at all did you learn of Dr. Stewart's connection with, or any claim that any oil company was in any wise interested or might become interested in the purchase of this land. A. I never knew anything existed between—that is that this property or that oil people were interested in this property until I came up here on or about the 15th of October, 1903, and went to Dr. Stewart's office

and told him that I had come to see him about having the Ball property surveyed. He asked me then not to have it surveyed and not to agitate the matter. I told him according to our agreement he was—it was to be settled up by a survey in November. He told me then for the first time that he had promised the oil people to let them have this property at just what he had paid for it if they wanted it when the payment was to be made for it in November, but that he did not want them to have it, he had bought it for himself and wanted to keep it himself and if I would just let the matter drop or hold off he would pay me a thousand dollars or any reasonable amount I would specify and then have the property surveyed

98 because his word would be kept with the oil people and if they did not meet their obligation in November that he would be under no further obligations: that if the oil did not materialize there, that he expected to divide that property and sell it off into lots for settlers to go into that neighborhood. I reluctantly consented to the proposition and agreed after consultation with Mr. Ball to wait until the 7th of November before we made any further move. I don't think that I had any more conversations in which the oil company was mentioned until after the death of Mr. Ball. After Mr. Ball had been buried and I think about a couple of days or something like that, I came up and saw Dr. Stewart. When I went in he asked me what was the matter with my man down there, and I told him there was nothing the matter with him he was dead. He said "That will alter our arrangements a little" and I said "Yes, sir, I can go no further or nothing further can be done until the matter is entered in the Orphans' Court. I said "Then I will be able to talk with you." I don't remember exactly but I think he said "All right" or something of that sort. Anyhow nothing was further said or done. Then I saw him again afterwards. Just add there if you please that just before—two days before the death of Mr. Ball, I received a letter from Dr. Stewart telling me that he would like to see me before the seventh of November. When Mr. Ball died I knew I had no authority to do anything further and I did not see him until he was buried. I have it somewhere in my letters but I could not find it. He simply said he would like to see me before the 7th of November in reference to the Ball property. I have made diligent search to find the letter.

Mr. MERILLAT: I would like to ask you at this point  
99 whether Alfred W. Ball was aware of or ever saw the contract between yourself and Dr. Stewart or between yourself and A. W. Thomas.

WITNESS (over objection): After we had signed the agreement I sent this check on to the bank of Laurel and waited until I heard from the check, whether it had been paid, and after I had received notice from the cashier that the check had been honored I took the four hundred dollars and this contract that I have produced here and signed by A. W. Thomas for Dr. W. W. Stewart and myself for A. W. Ball and gave it to him and he read it—A. W. Ball read the contract over. After reading it I produced this receipt ratifying the

sale which he signed. He made no objection except to ask this question and my assurance upon the assurance of Mr. Thomas and upon what I had authority to do that it was a *bona fide* sale—out and out sale. Nothing more than that he positively refused to give me authority to give any option on the place and upon the power of attorney he gave me he specially stipulated in that and refused to give me any authority to give any option on the place and I never gave any.

Mr. MERILLAT: Please state whether you came up to see Dr. Stewart in October concerning the surveys and if at the instance of any one, who was it?

A. Yes, sir; and at the instance of Mr. A. W. Ball himself who was anxious that it should be surveyed.

Mr. MERILLAT: Please state if you know whether or not A. W.

100 Ball at all times stood ready and willing to make any deed of conveyance prior to the time of his death upon the completion of the terms of the contract?

A. I know it positively. Objected to as a conclusion.

Mr. MERILLAT: Please state whether or not it is a fact that A. W. Ball was aware of your call on Dr. Stewart in October and that a postponement of the survey was desired?

A. (Over objection.) I will state in reply to that that I went directly to Mr. Ball and told him so, about this. Asked as to taxes witness said: I told Mr. Stewart that as Mr. Ball could not cut a stick of wood off the place, it was his place; he bought it, and as Mr. Ball could not rent it and could not cut any crops from it and that Mr. Ball and myself stood ready at any time to complete this sale, that he would have to pay the taxes on the property for the remaining part of the year, from that time on and he agreed to it and sent me a check for the payment of the taxes for the balance of the year which was one half of the year. (Call for the check and promise to produce it if there is any such check.) Witness: I know of my own personal knowledge that no wood was sold or that any revenue was received from the place whatever after the sale of it to this very moment—and I would state further that a man is in charge of the place and taking care of it and he gets his house rent and fire wood for taking care of the place but never since the death of Mr. Ball nor since the sale of it has one cent in the way of rents or wood or any revenue whatever been received from the place.

101 Mr. MERILLAT: Doctor, contemporaneously with the signing of this agreement between yourself and Mr. Thomas or Dr. Stewart, what if any understanding or agreement was there as to whether or not this was a sale or an option—or an absolute sale of the property itself?

A. (Over objection.) There was a positive understanding with all parties concerned that it was a *bona fide* sale and no option: that Ball had given me no authority to give him any option. A conversation occurred with Mr. Leapley and with Dr. Stewart both and



other parties that I would not grant any option under any circumstances for any amount. I said that to A. W. Thomas when he was drawing up the contract. I told Thomas and Thomas agreed that it was a sale & that there was no option about it & Thomas said it was put in there for my protection & no other purpose. The first time that I ever heard of any forfeiture was on the second visit when I came up to see Dr. Stewart after the death of Ball. Then he told me "Do you know that I bought this property for the oil company?" and I said "I know of no such thing." It was between the 15th of October and the first of November. Subsequent to the death of Ball, in the first of November. It was subsequent to Ball's death—not in—

Mr. MERILLAT: November, but not October.

Mr. THOMAS: Why do you correct the witness in the midst of his answer?

WITNESS: I wish to say as I have said the first time I ever heard of any forfeiture was after the death of Mr. Ball and the second visit that I made to Dr. Stewart. Then he said to me, "You know that I bought this property for the oil company" and I said "I know nothing of the kind." It was not the 7th of October but some-  
 102 time during the month of November. I wish to say that before when I stated between the 7th and 15th of October I intended the 7th and 15th of November because I know it was positively—it was not prior to the death of Ball: that the conversation with reference to the forfeiture was not prior to the death of Ball but it was after the death of Ball, and at the same time when he told me—he said "Yes I did buy it for the oil company." I said "I have nothing to do with the oil company and look to you exclusively." He said "Will you go ahead and let them forfeit their five hundred dollars? Go ahead and sell the property if they don't meet their obligation and let them forfeit their five hundred dollars." I said "I have nothing to do with the oil company and will deal with you exclusively, Dr. Stewart. That was all that was said about that forfeiture—all I ever heard about it. There was nobody with me when I was in Dr. Stewart's dental office. At the time of that conversation I had with me no papers. I will add if you choose that I told Dr. Stewart that I had no legal right until the papers were filed and properly fixed by the Orphans' Court.

After the death of Ball I presented the will of Alfred Ball: had it probated by the Orphans' Court and got from them power to transfer this property to Dr. W. W. Stewart after having submitted to the Orphans' Court the contract of sale and then came to see Dr. Stewart. Objected to as incompetent. Witness continuing in answer to questions said: The regular sessions of the Orphans' Court are held on the first and third Tuesdays of each month. After I had secured  
 103 the order of the Orphans' Court and we had the deed and the mortgage ready I went with Mr. Ambrose and saw Dr. Stewart and tendered him these papers and told him that we were ready to give him a deed under the order of the court and asked his compliance with the terms of the contract. He said in



the presence of his lawyer, Mr. A. W. Thomas to whom he handed the papers he was ready to comply with the terms of the contract when a valid title was given, but that he did not consider the title then complete. Mr. Ambrose asked him in my presence "Then you will accept these papers and comply with the terms of the contract when the title is satisfactory and complete?" and he said "Yes, sir." The question was mentioned by Mr. Ambrose after Dr. Stewart had agreed to accept the title to the property if it was properly certified to by Mr. Joseph K. Roberts. Mr. Stewart then stated that Mr. Thomas thought there was a link missing between the time—at least the time of the completion of his abstract or the title given there and the present date and that they agreed to make good. Mr. Thomas, acting in the presence of Mr. Stewart and for Mr. Stewart, sent me and I passed over to Mr. Roberts just what he desired done to complete the title. At least what was missing or what they considered was the missing link in that title. At that time I had an abstract of title from Mr. Joseph K. Roberts.

Mr. MERILLAT: I desire to offer in evidence that abstract by Mr. Roberts.

Mr. THOMAS: Objected to as incompetent there being no contract between the parties.

Said paper is marked Complainant's exhibit A-5.

104 Prior to that time we had a survey made of the property by Mr. William J. Latimer whom it was agreed with Dr. Stewart should make the survey and I produced his papers to Dr. Stewart. It was sometime I think the latter part of November (presented the "deed, title and other papers") or sometime about the first of December. It is impossible for me to state exactly as I made no memorandum & cannot carry the times of a half dozen interviews in my head. As soon as the Orphans' Court had completed the matter the papers were ready to be presented. I do not know exactly the dates. Sometime about the latter part of November or first part of December although I am not certain. I do not remember exactly when the survey was made or the date of the presentation of these papers. I did nothing—absolutely nothing except a couple of interviews with Dr. Stewart, and I made no tender to him whatever until I had the power and authority from the Orphans' Court and presented that authority to Dr. Stewart. I positively made no tender or anything until the Orphans' Court had authorized me because I knew by four years' service in the court as judge of court that I had no authority to do or make any offer. I had conversations with Dr. Stewart prior to this order but made no tender to him and no offer to have any sale completed until the Orphans' Court had authorized me.

Q. Now doctor please state whether or not this is the survey that you had made?

Objected to as bearing no date and being self serving.

A. That is the survey made by Mr. William J. Latimer, the person agreed upon to make the survey.

105 Q. When was it made with reference to the death of Ball?

A. I do not know exactly the date that was made. I cannot state the month it was made in. Whether we went up and saw Dr. Stewart prior to the time the survey was made I do not know but I know a tender was made after the survey was made and based upon the survey. I never made any tender to Dr. Stewart or asked him to do anything until after the Orphans' Court had authorized me to do so. I went and talked with him twice but made no tender whatever. My authority as agent ceased at the death of Ball and for that reason I made no tender to him until I was authorized and presented to him when I made that tender, that survey of Latimer. In answer to further questions witness said: They were boring for oil until the cold weather drove them away. I think that was up until the first part of 1904. They were endeavoring to secure purchase-s and to secure options on that property until sometime in the winter—November and December. As to the survey showing 288 acres I don't think we had any conversation except Dr. Stewart said he did not think there was that much land in it but further than that we did not touch upon that subject. He agreed to accept it at the tender if there was a clear title given.

Survey offered in evidence.

Objected to as immaterial.

Marked Complainant's Exhibit A-2½.

When we first saw Dr. Stewart and was talking about the title they merely said they wanted the missing links from the time that ours stopped up until the present time. As I said he gave—

106 Mr. Thomas—sent to me for Mr. Roberts—I think so—I know Mr. Roberts received—I know I received it and handed it to Mr. Roberts just what missing links they thought was deficient and then Mr. Roberts completed at my request this title up to this time—up to the present time and Mr. Stewart said that he wanted that and would be willing to accept the property if the title was made complete. He said that they agreed that Mr. Roberts should look into the matter and Mr. Ambrose suggested "You get any body you want to look into this matter" I do not know what answer was made to Mr. Ambrose- suggestion.

Mr. MERILLAT: Doctor it is stated in the answer of the defendant that the consideration paid to you and Ball and the money used to pay one half the taxes was the money of the Maryland Oil Company—Maryland Oil and Development Company—and both you and Ball knew about that—knew that to be a fact. Had you any such knowledge?

Answer. Had no such knowledge and the check was W. W. Stewarts individual check: I think it was for \$4.25. It was a few cents too much and I returned Dr. Stewart some postage stamps.

Mr. MERILLAT: And that the contract was made in the name of Stewart merely for convenience and that you knew that fact?

Answer. I knew nothing of it at all and I do not know it up to this time.

Question. It was also stated in the answer of the defendant that

in a conversation on November 10th, 1903, you declared that the matter was ended and the contract was at an end? Answer.  
107 I never did anything of the kind, sir, and never thought anything of the kind. The only thing I ever said about any contract being at an end was my power as agent of A. W. Ball, which ceased at his death, but the Orphans' Court could take it up where it was left off.

Question. It is also stated in the answer that on the 23d of November you acquiesced in a refusal on the part of Stewart to carry out and perform the contract of sale. Is that correct? Answer. No, sir: I never gave any such acquiescence. (57) Never did such a thing and never had authority to do such a thing.

Question. Now I will ask you if Ball was a man of learning, experience and education? Answer. No sir, he was an illiterate man and would transact no business without he had, or put his name to any papers, without he had the authority of some one in whom he had confidence. Answering further questions witness said: When Dr. Stewart objected on the ground that the title was not good I told him I thought I was worth as much property as was involved there and that I would give him a warranty deed or guarantee the title and make myself responsible for it.

Mr. MERILLAT: I desire to offer in evidence the two abstracts of title made by Mr. Joseph K. Roberts.

Mr. THOMAS: Objected to as immaterial and as having been made since the death of Ball and when there was no contract between the parties.

Marked Complainant's Exhibits A-7 and A-14.

108 Shortly before this suit was filed I called on Dr. Stewart in company with Mr. Ambrose and Mr. Merillat. We went in and tendered all these papers and this deed and mortgage and also to have—but Dr. Stewart became rather angry. He declined to carry it out and said "Let me send for my lawyer."

Cross-examination.

By Mr. THOMAS:

It is impossible for me to know how old Alfred Ball was. He was much older than I was. I think about—I am not positive, but I think somewhere about sixty-six or between sixty-six and seventy years old. No sir, let me see. It was his brother Jim. I think about seventy-two years. I can find that out for you if you wish it. He was an old man between seventy-two and seventy-three years of age—his brother Jim was younger. James Ball died sometime during the month of June, I think sir. My books will show. 1903.

Q. How much money did you receive from Alfred Ball's estate? A. When I paid Alfred Ball this four hundred dollars in part payment for this land he asked me to deposit for him in the bank of Laurel, which I did in his name, three hundred dollars, and he kept one hundred dollars for himself. The book which I can present, of the bank of Laurel, which is now in my possession will show the deposit of three hundred dollars out of the four hundred dollars in

the bank of Laurel. He told me he had no money to live on and would keep one hundred dollars. I did deposit the three hundred dollars in the bank of Laurel. It was agreed that out of  
109 the five hundred dollars I should pay him four hundred dollars and I should retain one hundred dollars.

Mr. THOMAS: I move to strike out the answer as not responsive.

WITNESS: Just stop me when you find I am not answering satisfactorily. I am only answering to satisfy you.

Mr. MERILLAT: I think the doctor misunderstood the question.

Q. I asked you how much you received as executor? Complainants counsel objected to the question as irrelevant. A. I will just say as I had settled up Jim Ball's estate and there was something coming from Alfred Ball to James Ball and James Ball had just died and all the money in bank—I do not know the amount—but the report to the Orphans' Court will show which I will produce.

Mr. THOMAS: I call for that report.

WITNESS: I will bring it up.

The personal estate of Alfred Ball was something less than—everything there was less than—I will bring that too—Fifty dollars.

Mr. THOMAS: I call for that.

I do not remember what the land was appraised at but I will have the whole transaction brought up—a certified copy from the Orphans' Court.

Q. Did you receive any money as executor of James Ball? A. I was his executor myself.

Q. Did you receive any money? —. Yes sir.

110 Q. How much? A. I did not—I cannot answer that question exactly because I do not remember the amount. The Orphans' Court will show it. I simply say I received money from the estate of James T. Ball.

Q. How much was due Alfred Ball's estate from the estate of James Ball when you closed up James Ball's estate? A. That I say, I do not remember, but I will bring you a copy of the report when you wish. Witness takes a memorandum of the papers called for by Mr. Thomas. Complainant's counsel objected to this matter as entirely irrelevant but said they had no objection to producing.

Adjournment to September 8, 1904.

SEPTEMBER 8, 1904.

JOSEPH K. ROBERTS—Direct examination.

By Mr. MERILLAT:

My name is Joseph K. Roberts: residence Upper Marlboro Maryland, age 31 years; attorney at law: and a member of the Bar of Prince George's County since April 1895. Prior to that time I was in my father's law office and the office of my brother-in-law, Mr. William Stanley of Upper Marlboro since 1890. I guess I have done as much examination of titles, almost more, than any attorney at the bar. I used to do the title work for the old Prince George's County Abstract Company. I was employed by Dr. Griffith and by

Dr. Stewart. First through Mr. Thomas and in Dr. Griffith's office to look up the title to this property—the Ball property, which I did, and make an abstract of it. The first time I saw Dr. Stewart  
111 about it was rather informal. I met him and Mr. Leapley in the clerk's office in Upper Marlboro. I was in there running over some dockets or records. Dr. Stewart and Mr. Leapley came in there. I think they just walked in there and I met them and they told me they were trying to negotiate for the Ball property with Dr. Griffith. That was about all. That was all I saw of Dr. Stewart at that time—the first part of June. I do not remember the date. After that Dr. Stewart and Mr. Leapley went out of town together. I did not see any more of Dr. Stewart in the matter at all; that is up to that time. The next day or somewhere about the fourth or fifth of June Mr. Thomas was at Dr. Griffith's office in Marlboro and he had prepared that agreement of sale of which you have his manuscript. Mr. Thomas drew up that agreement. I was not present at the time of drawing it but I was called in by Dr. Griffith and I went over it with Mr. Thomas and Dr. Griffith and I told them it was all right and they signed it and I was a witness to it. I then took the agreement that was written by Mr. Thomas. It was understood that there was to be a further agreement which I was to draw. I did. That is the agreement filed in evidence. The only thing I recollect about the conversation in the clerk's office with Dr. Stewart and Mr. Leapley was something about the Ball property in Centerville near the oil company's property. Dr. Stewart asked me at the time to get some papers in the office. I think I did. Some leases. I suppose it was a matter of a couple of days after I met Dr. Stewart that I met Mr. Thomas. I was first employed the day that agreement in writing of Mr. Thomas was executed in Dr.  
112 Griffith's office. By direction of Dr. Griffith and Mr. Thomas both I was to draw up another agreement along the same lines I was to draw it in duplicate.

Q. Prior to this time had you drafted any powers of attorney for Dr. Griffith with reference to this Ball property? A. Yes, sir. I did not recollect drawing more than the one that was offered in evidence and signed by Ball. Dr. Griffith asked me to draw it and I drew it.

Q. What if anything do you know as to the power of attorney being shown to Mr. Thomas or Dr. Stewart and when? A. I do not remember anything about that at all. Dr. Griffith and Mr. Thomas were there possibly an hour before I came there at all. I do not remember of showing any power of attorney there. I saw Dr. Griffith and Mr. Ridgely, Alfred Ridgely, drive out of Marlboro together. Mr. Ridgely was the justice of the peace. Where they went I do not know. They went up the pike towards Centerville. Ball's property is within a stone's throw of Centerville. I saw Mr. Thomas and Dr. Stewart sometime after the death of Mr. Ball in November. I went there at the request of Dr. Griffith to find out what they were going to do—what Dr. Stewart was going to do in the carrying out of the purchase of the property. I went in there and saw Mr. Thomas first. I think Dr. Stewart came in there from up stairs afterwards.

I spoke about the Ball property and asked whether or not the sale would be consummated and I think Mr. Thomas did the talking. Dr. Stewart was there. He said the title was not satisfactory

113 because Mr. Ball had died and complications had arisen by reason of his death and the heirs would have to sign the deed, if they could be gotten. That is about what I recollect about it. Mr. Thomas was not satisfied with the title and said he could not get a good deed. I think I tried to explain how under the Maryland practice the administrator could be authorized to execute that deed and that did not suit Mr. Thomas. He was not satisfied with that and said the court had no authority in the matter and the heirs would have to come in in some way and join in the deed. Well I recollect I told them that the heirs were so badly scattered that they could never be gotten. I think I did. I knew that that was a fact.

Mr. THOMAS: I want to put on record an objection to this proceeding because the heirs are not parties to this cause.

I had not seen either Dr. Stewart or Mr. Thomas in reference to this matter prior to the death of Ball. Further answering witness said: Nothing was ever said about any oil company. I never heard of that. Nothing at all. (Over objection.) Nothing was ever said to me about an option or that there was a right of forfeiture. I had charge of the matter in a way for both of them. I used to go and see Dr. Stewart often. Witness put the matter in Mr. Ambrose hands & later received a letter through Mr. Ambrose from Mr. Thomas in reference to the title. I prepared an abstract of title in this case. Subsequently I prepared another one. It was prepared

114 to cover the objections that you speak of in that letter from Mr. Thomas, the four page letter in which he set out the objections which he found to the original abstract. The call I made on Dr. Stewart and Mr. Thomas was two or three days or possibly a week after the death of Mr. Ball. The latter was some time in the latter part of November if I am not mistaken.

The letter is offered in evidence and marked Complainants Exhibit A-15.

Under objection.

I am familiar with the practice in Prince George's County and I think a couple of months would be a reasonable time within which to procure authority from the court for an executor to carry out a contract for the sale of real estate made by a decedent. He had had a number of these cases & it sometimes took four or six months. The Orphans' Court met regularly only on the third Tuesday in each month & a special meeting on the first Tuesday. The oil excitement as I understand it began in Prince George's County about the winter and early spring of 1902 and still goes on although in a milder degree. I understand that the oil excitement is still continuing. The latter part of May and along there it was about at its height but about Christmas I think it had decreased. In Prince George's County lawyers largely do a real estate practice. I am fully familiar with real estate values especially in that locality and



the oil excitement along about the summer of 1903 increased land values about forty per cent. I should say. At the present time it is very much decreased. It has gone back a great deal since the excitement died. Right below Meadows down there about a mile—

(the oil company owns that whole section of the country from  
115 Centerville nearer down to Waterloo Road) that was considered the oil land and Surratt's district. This Ball land fronts on the road there from Francis meadows to what we call Centerville. I suppose it is a mile front. At least a mile and maybe more. It fronts the property that is now owned by the oil company known as the Maryland Oil and Development Company. I think it is the Osborne property and joins the Magruder property. That was purchased by the oil company and now owned by it. It practically fronts the whole of the oil company, that is towards Washington, the direction of Washington and the Marlboro Pike. To front on a road is about half the battle in selling a piece of property; if you take property off the road it is hard to sell. The Ball property fronts on a very good road. In winter there is a little place that is a little low but it has been filled up now. It is a pretty good road. Of course it does not compare with the Pike. The Ball property while it does not front on the Pike is practically considered right at the Pike. I suppose it is not a quarter of a mile from the Pike from the gate. Where the line starts it is a great deal nearer almost one half as near. The Pumphrey property was bought by the oil company. It was bought by Mr. Briggs first. I sold it to him. It brought twenty-two and a half an acre. I think the Osborne property comes in between the Ball property and the Pumphrey property. I do not think it is more than a quarter of a mile or maybe a half mile away and sold in 1901. There was a rise in values between 1901 and 1903.

This property in question was all the property Ball had at the time of the contract, I don't think James T. Ball had yet  
116 died. I am sure he had not. That is all the property that Alfred Ball owned at that time in Prince George's county—that is had title to.

The property all lies contiguous and adjacent to each other. Child's Portion is near Centreville, over nearer to the Pumphrey property. That is part of Child's Portion, Crotch Hall and addition to Crotch Hall is further up. They all join together. I always understood it was considered as one tract. I never heard of any one else claiming it. Over objection. It was always known as Alfred W. Ball's property. No body has ever set up any other right to it so far as I know. I never had much connection with the property prior to June 1903. At the time of the agreement Mr. Ball was living on that part of the property where the house was. Of course he exercised dominion over the whole thing. Objected to as incompetent. There was an executory agreement between Alfred W. Ball and H. W. Coffin and L. W. Isham for the sale of this property in controversy—for a portion of this property—on the record—in June 1903. As to Dr. Stewart knowing of it I do not remember that I ever told him anything about it but he knew of



it for he had the abstract from June to November. Nothing was ever said about it. I do not know of my own knowledge outside of what was furnished to him by me from the record. I would not say that he did know of it from my own knowledge. Under objection that the witness had not qualified as a surveyor and that it involved the description of all the contracts in the case and the description

117 of the bill and called upon him to be the judge of the identity of the property described in the survey and of that described in the bill. Witness when handed the Latimer survey said:

The survey represents the property owned by Alfred Ball. I know it from the location and I know the location of the adjoining properties also. I do not know of course much about that plat. I can tell by looking at that plat and the adjoining properties that this is the Ball property.

Mr. THOMAS: So can I tell that and I move to strike it out.

Witness continuing: And also from my knowledge of the Ball property personally. Referring to the affidavits of Samuel J. Fowler and J. T. B. Smith (under objection that the Fowler affidavit is not evidence of any fact whatever and he is not shown to be competent according to the face of the affidavit to make any such statement as it purports to contain respecting the wife of Henry Jackson Ball, that he is not shown to be a member of the family or to have any knowledge of it from members of the family and to the affidavit of Smith on the same grounds and on the additional grounds as to both that they were made after the termination of the contract between Ball and Stewart) witness said: I drew these affidavits up from the suggestions and objections laid down in the letter of Mr. Thomas of December 17th in which it was stated that it did not appear affirmatively that the wife of Henry Jackson Ball had died prior to the death of Alfred W. Ball and these affidavits were made to meet those objections. Said affidavits are in words and figures following (offered under objection):

118 STATE OF MARYLAND, *Prince George's County, To wit:*

I Samuel J. Fowler, of The State of Maryland, Prince George's County do hereby swear that to the best of my knowledge and belief that Elinor Ball, wife of the late Henry Jackson Ball, has been dead for the period of at least thirty years. That she died at her home near Centerville, and that she had been dead over thirty years to my certain knowledge.

(Signed)

S. J. FOWLER.

Subscribed and sworn to by the above named Samuel J. Fowler before me the subscriber a Justice of the Peace of the State of Maryland, in and for Prince George's County, this 14th day of January, 1904.

JAMES E. SEARS,  
*Justice of the Peace.*

STATE OF MARYLAND, *Prince George's County, To wit:*

I, J. T. B. Smith, of Prince George's County in said State of Maryland do hereby swear that to the best of my knowledge and belief that Elinor Ball, wife of Henry Jackson Ball, deceased, has been dead for the period of thirty years. That she died in her home near Centerville, in said county of Prince George's in said state.

J. T. B. SMITH, *Subscriber.*

Subscribed and sworn to before me a justice of the peace of said state in and for Prince George's County this 14th day of January 1904.

JAMES E. SEARS,  
*Justice of the Peace.*

Mr. Merillat having stated they regarded the opposing side bound by Mr. Roberts' opinion but were willing certified copies should be produced of every deed in the chain of title.

Mr. Thomas said he did not intend to bargain and added: I propose to take any advantage in descriptions of title as shown by the abstract of Mr. Roberts that I can, and I don't see that we are bound by his opinion in any way at all.

Cross Examination deferred.

SEPTEMBER 13TH 1904.

Session Resumed.

Mr. WILLIAM E. AMBROSE—Direct examination.

By Mr. MERILLAT:

I am thirty years of age and a lawyer by occupation. My first actual knowledge of Dr. Stewart and Mr. Thomas in reference to this suit was sometime subsequent to the 23d of November, 1903, at the office of Mr. Thomas in the Stewart building. I went to the office of Dr. Stewart with Dr. Griffith for the purpose of having an interview with Dr. Stewart. Dr. Stewart invited me and Dr. Griffith to the office of his attorney, Mr. Thomas, on the second floor of the building. I stated that we had come to offer a deed to the Ball tract respecting which Dr. Stewart had entered into an agreement with Dr. Griffith. A deed to the tract and a mortgage and notes were tendered to Dr. Stewart. Mr. Thomas then said "Hold on a minute." "You cannot give us a good title." From that time on for perhaps ten minutes the title was discussed pro and con, all parties present joining in the conversation. Mr. Thomas as attorney for Dr.

Stewart raised numerous objections to the title, more particularly to the order passed by the court through which Dr.

Griffith, as executor, was authorized to convey the property. I answered the various objections as well as I could and stated that the order was passed under a statute enabling courts of that jurisdiction to pass such an order, but was unable to satisfy Mr. Thomas although Dr. Stewart seemed to be more amenable to reason. No objection was made to the abstract but to the condition of the title.

I then offered to have them select a title examiner who would be acceptable to them and suggested our willingness to abide by that examiner's finding. Nothing definite was determined at this stage of the conversation respecting that subject except that Mr. Roberts had so far been satisfactory in his researches. After some further conversation Dr. Griffith with Dr. Stewart and myself went out into the hall way, and there it was agreed that Mr. Roberts was to continue the title work; cure such defects as could be cured and that his ultimate opinion would be perfectly satisfactory to Dr. Stewart. Before going into the hall way Mr. Thomas promised to see me in a day or two and give me a statement of the objections, which statements were to be submitted to the examiner, who by the authority of Dr. Stewart was to be Mr. J. K. Roberts of Upper Marlboro, for his investigation and if the defects appeared to him to be such as needed investigation he was to make the proper investigations and to correct the defects. Dr. Stewart, on parting, stated that he desired Mr. Roberts to continue the work that he had done: that he was satisfied with the abstract as prepared by Mr. Roberts but would

121 desire such points as were raised by his attorney to be cured and that Mr. Roberts should proceed to cure them if the defects were such as necessitated action. Asked what if any claim of forfeiture was made witness said: No question was made by Dr. Stewart or his attorney at this interview that there had been any forfeiture. His recollection was clear on that. I asked Mr. Stewart if he desired to carry the contract out if a good title could be had to the property. He stated most emphatically that he had no other end in view than the perfecting of this title and the taking to himself of this land. I then asked him if he wished to drop the matter and let the five hundred dollars he had paid go. He stated that he did not, that he wanted the land: that he had arranged to buy it and that he would be disappointed if anything happened by which he would fail to get it. I stated to Dr. Stewart in the hall way that we did not want to go on with this matter unless he proposed to adhere to the terms of the contract and complete the purchase and that if he proposed to suffer a forfeiture we wanted to know it then and there. He stated that he had no such purpose in view otherwise he would not have gone into the question of title so closely, that the matter would be a closed one & that he would have no further interest in the transaction and that the delay occasioned by the death of Mr. Ball and by such defects as his attorney considered existed would in no wise be taken advantage of by him.

Q. Did he make any claim that he had bought merely an option?

A. Absolutely none.

Dr. Griffith and Dr. Stewart, in discussing the quantity of  
122 land stated that they would await the finding of a surveyor who was engaged on the survey; the matter of a larger quantity than the contract specified was discussed and some question as to a grave yard site between them at a subsequent date. I went several times to Mr. Thomas' office and found him once and he stated that he had been so busy with the oil matters that he could not get up his objections. Perhaps a week or ten days later he came to my

office and we discussed the matter and he handed me a letter which is filed in this case setting forth his objections with the suggestion that it be sent to Mr. Roberts for his perusal and action. Witness replied they would give it immediate attention & asked Thomas again if they could perfect title & give him a good title would he take the land, meaning Dr. Stewart & he Thomas so understanding. He stated that he would and that the only thing that bothered them then was the question of title to the land and that so soon as Mr. Roberts satisfied him that the title to the land was good Dr. Stewart would complete the purchase. One of the objections to the title was that there was a possibility not a probability that certain persons interested by dower or otherwise might be living & that affidavits showing their death should be had. Dr. Griffith tendered himself ready and willing to perform each, every and all of the requirements of the contract and there was an acceptance of that tender: absolute acceptance of the tender with no reservations as to any other questions.

Q. How as to the title or as to the court's authority?

123 Mr. THOMAS: I object, after having gotten his witness to make a statement to prompt and correct him by any leading questions and suggestions.

WITNESS: I understand Mr. Merillat's question to be whether Dr. Griffith tendered himself ready to meet such objections to the title as were made and have the record title perfected in order that a good title might be transferred. That is what I understood the question to be and it was in response to that that I made my answer.

Mr. MERILLAT: What I want to know is whether or not there was an acceptance of the tender—an unqualified acceptance of the tender that was made by Dr. Griffith?

A. Do you mean the tender?

Q. Of the deeds, etc. A. If you mean that yes sir.

Q. Was the transaction closed out then? A. By the passing of the deeds?

Q. Yes sir, and the payment of the price. A. No sir.

Cross examination reserved.

SEPT. 15, 1904.

COLUMBUS PUMPHREY—Direct.

By Mr. MERILAT:

I am 57 years old and by occupation a fruit raiser. I live at Meadows, Prince George's County, Maryland. About a quarter of a mile from the Ball property and have lived there for forty years. The tract may be about a quarter of a mile from the roads. It lies on the Alexandria Road that is running from Upper Marlboro to Alexandria. It lies about three quarters of a mile on the road. Part of the frontage I don't think is over a hundred yards from  
124 the Pike. With the farm land there its location is good. I am acquainted with values there having seen land sold and sold land *myself* there myself—eighteen acres for twelve hundred

dollars. It had no buildings but had a fruit orchard. It was about three quarters of a mile from the Ball tract. The oil excitement was on about two years ago: it continued as long as they continued to bore for oil there, I guess near two years: it caused the values of land to advance. The Ball farm and the farm on which they were boring are adjoining lands—no sir, I think there is a piece of property between the two. Taking the oil excitement into consideration I should say fifty dollars was a fair valuation per acre. I have known the Balls all my life. I never heard of any claim of interest or ownership of any part of the land against the Balls: I knew the father until he died and to the best of my knowledge he exercised dominion and undoubted control over the tract. We lived close together and I would meet them sometime every day. I have frequently known land assessed down low sell for a great deal higher price. My own property (under objection) was assessed at thirty dollars but sold for fifty an acre.

Cross-examination:

By Mr. THOMAS: What was the rate of assessment half or two thirds of value A. I do not know.

Q. Assuming that your land was worth sixty dollars an acre then the land is assessed at half its value, is it not? A. I do not know.

125 Q. Well do you know whether land is assessed at half its value in your county? A. I think it was assessed at its full value.

Q. So thirty dollars was its full value? A. At the time of the assessment I suppose so.

Q. How long before the assessment did you sell it? A. I can't say. I suppose a couple of years—maybe a year.

Q. You sold it for fifty dollars an acre and two years after that it was assessed at thirty dollars an acre? A. Yes, sir. I cannot tell the amount of taxes I was paying on this eighteen acres. It had a good fruit orchard on it. I sold it to Mrs. Sparks of Washington and she had it tenanted out. I do not know what rent she got for it and I have no information as to that. The name of the company that was boring on the farm adjoining Ball's farm was the Southern Maryland Oil and Development Company. I did not know any of the officers of the company.

Q. Had you heard their names? A. I only heard of Dr. Stewart here (indicating the defendant). I heard that he was one of the men that owned it. I had not heard of Mr. A. W. Thomas belonging to the company. I suppose they were boring for oil near two years. I had met Dr. Stewart myself, who wanted to get a lease on my property, I could not say whether it was before or after June 1903. I think it was in either 1902 or 1903. I remember Dr. Stewart coming to my house and wanting to lease my property. I heard he was getting other leases for the company around there at the time. I don't know whether Dr. Stewart had leased Duckett's

126 place or not. I heard it had been leased, there was a good ma-y—several other parties were leasing. I heard that Mr. Leapley had leased a great deal; he told me that he had. He did not mention any particular land that he had leased.

Q. You heard of Leapley leasing land for the oil company? A. Yes sir, I heard that he was leasing land, he told me that himself.

Q. Had you heard of Stewart being around with Leapley? A. Yes sir. I only knew after they were boring there. I was told they were boring and also leasing. I cannot say it was prior to June 1903 or not, all I can say is that Dr. Stewart came to my house and I heard that Mr. Leapley was with him getting these options on the property or leases or whatever you call it. I think no part of Alfred Ball's land was under cultivation in June 1903. It was capable of being cultivated I suppose that there was land that could be plowed and cultivated in 1903. I think over fifty acres could be or maybe seventy-five. I don't know how many acres Ball had. It was called Ball's place that is all I can tell you. Very poor house on it (frame I think or log) might have been logs with planks over them. I think there were two rooms down stairs two or three. It was not worth much. Cannot say how long prior to June 1903 Ball's land remained uncultivated. Mr. Jim Ball used to raise a garden there. I cannot say how many acres—whether there was one, five or twenty acres. I only heard he was raising a garden there. I used to see him come to market I suppose there was a hundred acres under cultivation I suppose thirty years ago when his father was living and used to raise corn and tobacco and such stuff as that.

127 I was one of the appraisers of Alfred Ball's estate after his death and appraised this property under oath at eight dollars an acre. I should suppose it was a true appraisement. I think the appraisement was made about the 3d of December, 1903: I suppose I would have made a true appraisement and the value would have been eight dollars an acre at the time I appraised it.

Re-direct by Mr. MERILLAT:

Had the land been my own I would not have sold it for eight dollars. An attentive farmer could have cultivated it into a good farm: the eighteen acres I sold were not located as the Ball tract on the road, mine was between three and four hundred yards from the pike and the Ball property is located right on the road and that location enhances the value of land. I had heard that the oil people had actually made purchases of land down there: the oil people would not permit persons to come where they were boring.

SAMUEL J. FOWLER—Direct.

Mr. MERILLAT:

I was born in 1835 and live at Centreville which is also known as Meadows. I went to school with Alfred Ball and Jim Ball and his sister and lived about three quarters of a mile from them. I have lived down there off and on all my life. I was away from there



for five or six years in the forests working but I moved back again. I know the tract of land on which Alfred Ball resided. It lays  
 128 right on the Alexandria Road about 150 yards from the  
 pike—one end of it: the road is public and traveled by a great  
 many people: it is a good road. The Ball tract has nearly  
 a mile of frontage on the road except there are two houses and lots  
 in between there sold out of the Ball tract. Allie Ball I used to see  
 nearly every day and then again I would not see him for a month.  
 Never heard of any claims or interest in the land other than the  
 Ball's.

Q. Did Alfred Ball and his father claim the whole tract whereon they lived.

Objected to as leading and suggestive and because witness shows no family relation or opportunity to know.

A. Yes, sir:

There is one tract in between the Ball tract and the place where the boring was. On account of the boring for oil land sold at good prices; He did not get affected by the oil excitement and a good many more did not.

#### Cross-examination:

I was not present at the sales. Was told about it. Pumphrey sold and Mrs. Langley sold and Leapley sold I think to the oil company: I don't know; he said he got the money for it. He must have sold. I suppose Leapley sold; he said he sold; I only got his word for it: I do not know anybody to lease their land around there: don't know that there were in fact seventy-six leases there. Do not know that there were three or four sales to that number of leases. Don't know what Leapley got for his land; never heard or inquired: it was none of my business: haven't examined title to the Ball tract:

I know some of the boundary stones: don't know the number  
 129 of acres: I know it belongs to the Balls ever since I was this  
 high (three feet) one boy owned each farm: Allie Ball owned this farm and Jim Ball the Waterloo farm. When old man Ball died he gave Allie the place at Centerville and Jim the place at Waterloo: Not a member of the Ball family but used to go there frequently they had plenty of relations without being related to them.

J. ALFRED RIDGELY—Direct.

By Mr. MERILLAT:

My age is thirty-eight, by occupation a justice of the peace and residence Upper Marlboro, Md. I went to Ball's house along about the first of June—the 4th of June, I guess, and there were two powers of attorney executed on that day before me (131) from Ball to Dr. Griffith. I went up there with Dr. Griffith that day. I am acquainted with the signature of Alfred W. Ball.

Q. I hand you this paper being a ratification and ask you whose signature that is? A. That is Ball's signature—Alfred W. Ball.

Objected to as not having first shown qualification.



Q. I will ask you whether you have seen him write his signature at times?

Objected to as leading.

A. Yes, sir.

Q. To what extent have you seen him write? A. I saw him write his name on that day.

Q. State whether or not you saw the paper which I now hand you (being the alleged ratification dated the 19th day of June, 1903? A. I do not know as I can say I saw this paper  
130 signed. I saw him—he signed—yes sir, I think that paper was signed before me June 19th.

Q. Please state whether you have at other time seen his signature?

Objected to as persistent leading.

Q. What if any opportunity have you had of knowing Alfred Ball's signature? A. I have had two occasions that I know of him signing his name before me.

Q. Now I would like you to state and give your opinion, in view of your having seen his signature, whether or not that is his signature?

Objected to because the witness is not qualified.

A. Yes, sir, that is Alfred W. Ball's signature.

Q. Are you familiar with the sale of lands in Prince George's Co. Md.? A. No great acquaintance, but I have to some extent.

Q. Have you made sale of lands where there has been previously an appraisment of values? A. Yes sir, I have known land to be appraised and then sell way above the appraisement.

Line of examination objected to.

Q. Appraised at one price and sell at another? A. Yes sir that is no criterion of the market value or true value.

By Mr. THOMAS: One of the powers of attorney is in the Orphans' Court. They are both filed I think in the court of Marlboro. I did not file them: I saw them there: I saw both of them there:  
131 they were both original papers and I cannot be mistaken about it.

Q. Did you certify to more than those two powers of attorney? A. There were three; two at one time and one at another.

Q. So there were three powers of attorney. Where is the third power of attorney? A. Two powers of attorney that were executed before me I cannot exactly remember. I was there on two occasions. I was at the Ball place on two different occasions.

Q. Now give me the dates please, Mr. Ridgely? A. And there were two of them before the death of one of the Ball's and we were up there again after the death of one of them. I do not exactly recall the dates: I guess it was in June one time and probably the latter part of the same month or thereabouts. I cannot remember the dates now exactly.

Q. You say probably, what makes you say probably? A. Because I cannot exactly remember the dates.

Q. How many papers did you take acknowledgment of the first time you were there in June? A. Two and the next time one.

Q. Did you read those papers? A. Sometimes I do and sometimes I do not, but ask the parties—

Q. My question is whether you read those papers? A. No sir, I did not read the papers to them.

Q. I asked you whether you read them. A. You ask me  
132 whether I read them?

Q. Whether you read them? A. No sir, I did not.

Q. Will you be kind enough to look at this paper and see if this is your signature or not. A. Yes sir; that is my signature and certificate.

The paper was marked for identification (E. L. W.)

Mr. THOMAS: I call for the production of the original of three powers of attorney testified to by the witness.

Mr. MERILLAT: Counsel desires to state that the original of one of the powers of attorney is in the possession of the defendant in this case.

And counsel at this point in regard to the point that has been made desire to offer in evidence a certified copy from the proper officers as provided for by the Revised Statutes of the United States of the power of attorney and of the sale of this land, said paper having been delivered for record by Dr. Stewart and I simply mark this as an exhibit.

Said papers are marked complainant's exhibits A-16.

Mr. THOMAS: Inasmuch as counsel cannot know personally, not being a party to the transaction, of the truth of the statement that one of the three powers of attorney mentioned—the original of one of the powers of attorney mentioned is in the possession of Dr. Stewart we cannot admit that statement. If counsel will say, if he knows of his personal knowledge, that one of the originals of the powers of attorney is in the possession of Dr. Stewart that is another  
133 thing. We deny that there has been any proof that any original power of attorney is in the possession of Dr. Stewart or ever was in his possession and we say that it is not the fact. I object to counsel, during the progress of my examination, offering in evidence a certified copy of one of the original papers that has been called for. Now I would like to examine this certified copy (takes paper).

Mr. MERILLAT: If your objection is made to my offering it at this time I will re-offer it.

Mr. THOMAS: Yes, sir, I call for the original. I am sincere about that.

Mr. MERILLAT: In response to the call made by counsel I desire to offer in evidence the third power of attorney.

Mr. AMBROSE: The second.

Mr. THOMAS: I want what Mr. Ambrose says there to go on record.

Mr. MERILLAT: Mr. Ambrose is one of the counsel of record in this case.

Mr. THOMAS: Yes, I know, but before his cross examination is begun I want to show that he is actively conducting the case.

Mr. MERILLAT: In response to the call made I desire to offer in evidence the power of attorney executed by Alfred W. Ball on the 27th day of June 1903 with respect to the land that Alfred W. Ball acquired from James T. Ball and counsel having called for it I would like at this time to prove by this witness the execution of it.

Mr. THOMAS: I have no objection to that. May I read it?

Mr. MERILLAT: Certainly, and I desire to say that we have  
134 now spoken of two powers of attorney, the other power of attorney being the power of attorney from Alfred W. Ball to Dr. Griffith to sell the land that he Alfred Ball had acquired from his father, Henry Ball, is on record, the original, in the office of the Register of Wills for Prince George's County and we have offered in evidence a certified copy of that power of attorney the original being in the office as stated and its examination open to counsel for the defendant.

Mr. THOMAS: You mean to say that the last power of attorney referred to by you is the one you offer to prove by certified copy today?

Mr. MERILLAT: No sir, I say that heretofore we put in evidence a certified copy of the power of attorney which dealt not only with the matter of the sale of the land but with Dr. Griffith's compensation: that power of attorney being lodged in the Register of Wills' office of the county. We have today offered in evidence a certified copy of the power of attorney and the deed lodged in the proper office, namely, the county clerk's office of Prince George's County where deeds are recorded, which power of attorney, the certification states was recorded and the deed of sale recorded by Dr. Stewart and returned to Dr. Stewart. I have now offered in evidence the third power of attorney made at the latter stage by Alfred W. Ball dealing with the property that he subsequently acquired from Jim Ball.

Said paper is marked Complainant's exhibit A-17.

Mr. THOMAS: Objection to the certified copy offered today of the agreement and power of attorney said to be recorded on July  
135 2, 1903 in Liber 17, folio 401 as the original of the certified paper is a mere copy certified to by the complainant in this case as appears from the signature & last certificate of J. Alfred Ridgeley J. P.

By Mr. MERILLAT: For the purpose of proving this execution, Mr. Ridgeley, I will ask you at this point to examine the paper and state whether or not it was signed, executed and acknowledged before you by Alfred W. Ball.

A. It was sir. This is the one after the death of James Ball.

Mr. MERILLAT: I now offer it in evidence and call upon Dr. Stewart to produce the check for \$1.25 which he delivered to the clerk of the court or to the proper officer for the recording of the paper the original of which he asks us to produce.

By Mr. THOMAS: Then as I understand you, you were there twice in June?

A. Yes sir.

Q. Once in the early part of June? A. I did not say I was there—

Q. And later on the 17th of June when you took— A. The 27th whenever that was dated.

Q. The 27th of June when you took the power of attorney relative to the estate of James W. Ball. A. Yes, sir.

Q. Did you witness the signature of Alfred Ball to any papers between the early part of June and the 27th of June, 1903? A. I was there on two occasions only. This was the last time.

136 I did not witness his signature at any other place but at his farm. Had not seen Alfred Ball write before the visit to his farm in the early part of June. I did see him write that day. Did not see him write his name any more. I saw him write once afterwards.

Q. Referring to the paper marked the 19th of June, 1903, which had been shown you on your direct examination, I will ask you whether or not you know in whose handwriting the body of that paper is? A. That is Dr. Griffith's I think. I have seen Dr. Griffith write.

Q. Have you ever seen that paper before today. A. I have.

Q. Where did you see it? A. At Ball's house.

— When? A. The second time I was there.

Q. Who had it? A. Dr. Griffith and Ball both had it there together.

Q. They both had it. What was done with it? A. Ball signed his name to it.

Q. Did you see Ball sign his name to it? A. Yes sir.

Q. On the 27th of June? A. Yes sir; the 27th of June I guess. Yes sir, whatever the date is there.

Q. Now I call your attention to the fact that that paper is dated the 19th of June and that you have already testified  
137 more than twice that you did not go to Ball's house in the month of June between the first of June and the 27th of June, 1903. A. I said on two occasions—I don't remember the dates—I did not remember the dates until I saw the papers.

Q. Was this paper signed on a date different from the date it bears? A. No sir, I don't think it was, it might have been.

Q. Were you at Ball's on the 19th of June? A. I don't know. It may have been on the 19th and it may have been on the 27th. I was there on two occasions—I do not know. I do not remember.

Q. Your name does not appear on that paper? A. No my name does not appear on it.

Q. It does appear on the paper in which Griffith is made the agent of Ball in reference to the land of James Ball, does it not? A. Oh, yes, sir.

WILLIAM E. AMBROSE recalled for cross-examination.

By Mr. THOMAS:

My first knowledge that such a case would be brought up was I think about the 23d of November, of last year, when Mr. Roberts

wrote asking me to go into the matter. All the papers or correspondence were not submitted to me. Just a bare letter communicated that message. I may have seen the correspondence during the trial as I have seen a great mass of documents and correspondence. I met Dr. Griffith subsequent to the 23d of November—between that and the first of December. Would not agree that the interview between Griffith, Stewart Thomas and myself occurred on the 8th of December, 1903, at 11 o'clock a. m. because I do not know. I am confident the time of day was before noon. I spoke to Mr. Merillat about the case the morning I went over to Dr. Stewart's office; in fact I laid out my course of action at Dr. Stewart's office with Mr. Merillat before going there. Witness never had gotten the survey because later Mr. Merillat had been taken into the case & everything turned over to him & he did not know when Mr. Merillat got it. I went to Stewart's office for the purpose of ascertaining the position of Dr. Stewart in this matter. I had no authority to institute suit and had no reason to believe suit would be necessary. Dr. Stewart had contracted with Dr. Griffith to perform a certain thing I found when I went there that Dr. Stewart was trying to avoid it by technical objections. I mean this, that Dr. Stewart and his attorney were raising technical objections to a record title and they sought to delay the matter. I may have said that it was the purpose of his attorney and Dr. Stewart to avoid the contract and delay matters but I mean this that objections were raised there not to the performance of the contract but to the title such as necessarily involved delays with respect to the contract. I do not remember that an abstract was shown at that interview and I am not confident that a survey was shown at that time. I got an abstract but whether I had it at that interview I am not certain. The abstract was discussed pro & con & may have been shown at that interview but I am not certain. I think Mr. Thomas did furnish me with an abstract. It may have been furnished me sometime before the first of the year. If it was furnished me it was furnished about the same time Mr. Thomas' objections were furnished.

Dr. GRIFFITH recalled for plaintiff:

The taxes on the Ball property was \$16.40 and Dr. Stewart's check was \$8.25 and I sent him five postage stamps back. I desire to further state that I am prepared under oath to state as to the full amount coming into my hands in the estate of Alfred W. Ball. I can produce a certified copy but I did not know it was my place to procure a certified copy unless the parties on the other side are willing to pay for it but I am willing to state it under oath.

*Latimer's Evidence, Taken in Garfield Hospital.*

SEPTEMBER 16, 1904.

WILLIAM J. LATIMER—Direct:

By Mr. MERILLAT:

I am a surveyor. Sixty-five years old. Between the 15th of last November and say the 15th of December I completed the survey of

the Alfred Ball farm. If I recollect correctly sometime in the spring of 1903 I was engaged by Mr. Stewart and Dr. Griffith: when exactly I cannot tell, but I was to be notified when to make the survey and I was not notified until about the middle of November. Began the field work somewhere about the fifteenth of November and fell on the field on the 20th. I fell upon the field and had to be carried home. I had to leave the work. The field work  
140 had not been completed. My son under my instructions completed the field work. I went out a day or two after that and we completed the field work; they did it under my supervision.

Q. Now, Mr. Latimer, would you please state what experience you have had in surveying in Prince George's County? A. About fifty years, sir.

Q. And please state whether or not you had experience in surveying land near or about the Ball tract? What experience you have had? A. For the past fifty years I have known the Ball tract and the surrounding lands as, of course, one survey would come in at one time and then another survey and I was intimately acquainted with the Ball tract.

Q. Now, please state whether or not the paper which I now hand you represents the survey made by you of the Ball tract?

Mr. THOMAS: Objected to on the ground that it is not the survey—not the original.

Q. Please state whether or not that is a map made under your direction showing the survey that you had made? (Counsel hands witness map.) A. It is.

Q. Is this the original survey, plat or map that you had made?

Mr. THOMAS: Objected to as leading and it manifestly is not the original.

A. This is my signature.

Q. Please state whether or not this is the original map  
141 made under your supervision of the survey made by you?

Mr. THOMAS: Objected to as leading and counsel have already proven by this witness that this map was not drawn by himself. The surveyor's notes are the original papers. This is merely a memorandum which is the result of the notes and after the finished work by his assistants.

Q. Mr. Latimer, please state how this map came to be made and the manner under which it was made? A. When I was taken sick I could not write; that is fully, and I had it made by my assistants and examined it and signed it as usual. It is done usually in that way. I had been describing it myself in my own hand writing, but I could not do it. That is my signature. It was brought to me and I examined it and signed it.

Q. Which of your sons, if you know, made the map itself? A. My son, William, I think.

Q. And please state— A. I have four sons.

Q. Please state, if you know, whether or not the map was made from your own notes and data? A. How do you mean?

Q. Whether or not they were made from the notes that you yourself made of the survey—this map was made? A. Some of the lines I was not on, but I am satisfied—I am perfectly satisfied that they are correct.

Cross-examination.

By Mr. THOMAS:

142 Q. When was the map made? A. In December, 1903.

Q. What time in December? A. Well, it was between 15th and 20th I reckon, sir. The exact date—those dates we do not in our profession—we do not recognize because we are often sometime in finding a survey—as far as any particular date is concerned we do not give it upon our papers.

Q. Have you ever seen this gentleman, Dr. Stewart? A. Yes, sir.

Q. Before to-day? A. Yes, sir.

Q. When did you see him? A. I saw him I think it was in Dr. Griffith's office.

Q. When? A. Sometime last year. When, I do not know. I think it was about the spring of the year.

Q. Did he ever talk to you about a survey? A. Yes, sir. I rode to Marlboro to meet him at Dr. Griffith's office sometime during the year, 1903.

Q. In the spring? A. Well, I could not swear to that. I do not remember. I recognize the gentleman and recognize that I met him for the purpose of consulting him about the survey.

Q. You think it would be rather important, or at least the month or date of the month would be rather important? A. I cannot give it to you.

Q. You cannot tell me in what part of the year, 1903, it was? A. It was spring—about the spring or summer of 1903.

Q. You do not know or cannot fix it any better than that? A. I do not know. I cannot fix it in my memory. It was no account to me and I took no account of it.

Q. What conversation did you have with Dr. Stewart? What did he say to you? A. Well, it was in regard to making a survey.

Q. What did he say to you about making the survey? A. If I remember right it was that they would employ me at a certain price.

Q. I am not talking about that. I am asking you to tell me what Dr. Stewart said to you, if you can remember? A. I can tell you in a general way that he employed me to make the survey and at some future time.

Q. Did he give you anything? Did he pay you anything? A. He paid me? No, sir.

Q. Did he notify you when he would want you? A. Dr. Griffith did.

Q. Did Stewart notify you when he would want you? A. I do not remember about his notifying me, or being the one to notify me, but I was to be notified when to make the survey.

Q. Did Stewart tell you what he was to pay you, or agree upon



any price with you? A. I think he did. I think that was the purpose of his seeing me.

Q. What did you tell him was the price? A. I told him  
144 about forty or fifty dollars or something like that.

Q. You are sure of that? A. What it would amount to.

Q. You are sure that you told Stewart that? A. Something of that kind. I could not tell what it was.

Q. How long have you been in the hospital? A. This was the first time in my life.

Q. How long have you been here this time? A. I have been here Sunday two weeks.

Q. You are not now able to do any work? A. No, sir, not a great deal.

Q. Are you able to walk out unassisted? A. They generally assist me to walk around the house.

Q. This J. Alfred Osborn tract, did that comprise a part of the tract of twenty acres known as "No man's land"? A. Let me understand you. What is it?

(Hereupon the question was read.)

A. I cannot tell you.

Q. How did you get the location of the Osborn tract? A. I used the Osborn papers.

Q. How did you get the location of the Marshall estate tract. No, strike that out—Magruder? A. I got it from the original papers.

Q. Whose papers? A. Gen. Magruder's papers which I surveyed years ago.

Q. How did you get the Mayhew estate location? A. I made a survey of the Mayhew property somewhere about the year  
145 1880. Ball sold it off to Mayhew. It was '81, I think. I made that survey. You see it right there.

Q. How did you get the Fraser lines? A. I surveyed that in 1876 or 1877 for the court of Prince George's County.

Q. Taking your previous information from the papers of the estates of Mayhew and Magruder and this other information together you got the lines of their several tracts, did you not? A. In using their papers it was generally recognized as the Ball tract. I found the old boundary stones and the old ditch fences and everything of the kind.

Q. On all of the lines? A. Except the Magruder lines. It was on those lines the boys reported to me that they struck some stones that I had—that I had laid out and found out to be the proper corners years previous. I sent them with instructions to look them up and they found them.

Q. Of course, you were not present when the boys found them? A. Not all of them.

Q. You have just stated that you were not present when they got the line of the Magruder tract, did you not? A. A portion of the lines of the Magruder tract I was present.

Q. Did you have any papers from Dr. Griffith? A. I had some papers. Old deed, etc., which were of very little use.

146 Q. Did you have any abstract of title made by Mr. Roberts? A. I think I had.

Q. Did that give any lines? A. Well, I think it did, but it was in such a confused mass that I could not make much progress without previous knowledge of the property. I could not have made much use of it. There were deeds and abstracts I think that extended over into other lands years previous—one hundred years ago, I reckon.

Q. Had you ever made a survey of the Ball tract before? A. No, sir, not as the Ball tract—as a whole.

Q. Well, had you made an individual tract—had you ever made a survey of the Ball tract? A. I think I answered you that question.

Mr. THOMAS: Well, I won't press it in view of Mr. Latimer's condition of health.

Q. How did you get the lines along the main road from Camp's springs to Centerville? A. How did I get those lines?

Q. Yes, sir. A. It was made by a survey I made in 1874, the Allen line to the one made in 1876, the Charles Calvert line. In 1874 under order of the court I surveyed the Allen property. In, I think, 1876 or 1877 under the order of the court of Prince George's County I made the survey of the Charles P. Calvert estate, which are the lines to which you refer.

147 Q. How many acres did the Alfred Osborn tract contain? A. I forget. I cannot carry those things in my mind.

Q. Did you follow the lines of the Osborn tract as shown by the true boundaries that I marked with pencil on this map, one, two and three? (Counsel hands witness map.) A. I think so.

Q. When you met Dr. Stewart, who is now present, at the office of Dr. Griffith who was present besides you and Dr. Griffith and Dr. Stewart? A. I do not remember. From what I understood of the deal it was to make a preliminary discussion of the survey to be made and I was to be notified when to make it.

Q. Had the Ball tract been sold then? A. I do not know that it has been sold yet, sir. I do not know anything about it.

Q. Did you understand at that time that a contract had been signed looking to the sale of the Ball tract? A. I think that was the fact.

Q. That being the fact, if you were to be informed that Dr. Stewart was never down there in Dr. Griffith's office after the contract was signed would that change your testimony or refresh your recollection as to whether you had in fact ever met Dr. Stewart? A. I think I recognize this gentleman as the gentleman whom I met in Dr. Griffith's office sometime between the spring of 1903 and 1904.

Q. Mr. Latimer, you have not answered my question and I will ask the Examiner to read it. A. Let the Examiner ask it over again if I misunderstood you.

(Hereupon the question was read.)

148 A. I think not. I am satisfied that I met Dr. Stewart under appointment at Dr. Griffith's office and I made a contract with him to make the survey at some future time, I to be notified when to make it.

Mr. MERILLAT: I desire to move to strike out the inquiries of counsel with respect to the matters of boundary, etc., on the ground that they are immaterial and irrelevant in view of the employment of Mr. Latimer by the parties to make this survey and I again offer the survey in evidence.

Mr. THOMAS: I deny that that is the survey. That appears to be a map made by somebody else than the witness.

WITNESS: It was made by me and under my directions.

Mr. THOMAS: And signed by the witness.

WITNESS: And signed by me individually.

Mr. THOMAS: I maintain that it is purely hearsay.

The following is the ratification which was offered in evidence, by the Complainants.

JUNE 19, 1903.

I, Alfred W. Ball, having received from my duly authorized agent and attorney Dr. L. A. Griffith, the sum of four hundred dollars, do hereby ratify and confirm the sale made by him to W. W. Stewart of my real estate near Meadows, Pr., Geo. County, Md. This is with the understanding that if said sale is consummated and one-half of the purchase money be paid cash that Dr. L. A. Griffith, my agent and attorney, shall pay out of his commissions one-half of the cost of surveying and attorney's fee—the other half by W. W. Stewart otherwise I am to pay the cost of surveying and attorney's fees.

(Signed)

ALFRED W. BALL.

149 William E. Ambrose at the next session said he desired to make a brief correction in his previous testimony, and that where he stated he had said he wished if Stewart proposed to suffer a forfeiture to know it then and there he had meant to say if Stewart claimed the right to suffer a forfeiture he wished to know it.

R. E. LATIMER.

By Mr. MERILLAT:

Q. Please state your age and profession? A. 19; surveyor.

Q. State whether or not you took any part in surveying a tract of land known as the Ball tract in November—in the year, 1903?

A. Yes, sir.

Q. What did you do in connection with it? A. I followed my father's orders on the ground and run by the papers that he had of Magruder's and the surrounding tract of the Ball estate.

Q. Who did the field work on that survey? A. I did myself.

Q. What, if anything, did your father do in connection with it? A. He gave me the papers to run by and told me where the certain stones were to run to.

Q. What, if anything, did you find as to what he had told you in reference to the stones? A. I found everything there just as he had said.

Q. Please state whether or not your father also was in the field

150 with you? A. Well, he was in the field the first day and then the second day he fell and then we had to take him home and then he came back about the third day just as we were finishing. He came back out there and saw that it was correct.

## Cross-examination.

By Mr. THOMAS:

Q. How long have you been a surveyor? A. I have been with him ever since I could walk—ever since I could pull a chain.

Q. How long have you been actually surveying? A. For about two years.

Q. You say your father gave you the Magruder papers? A. Well, the surrounding papers.

Q. What are the papers besides the Magruder papers? What do you mean by the surrounding papers? A. The papers properly adjoining this property of Balls.

Q. Do you remember the names? A. Clagett's and Pumphrey's. In there.

Q. Have you surveyed Clagett's or Pumphrey's or Magruder's yourself? A. We did survey their lines, but by their papers.

Q. How long before? A. Well, no, we surveyed their lines.

Q. I understand, but what I am trying to find out is whether you yourself surveyed the Pumphrey, Clagett and Magruder tracts that we speak of? A. When we surveyed this we surveyed their lines about then all together.

151 Q. I understand that, but you don't understand me. I want to know whether you personally previous to this time surveyed the Magruder, Clagett and Pumphrey tracts? A. No, sir.

Q. Now, your father never did any amount of work for this survey that you speak of, did he? A. Well, he has never done a great deal, but then he has been ahead of it.

Q. You don't understand me. Wasn't your father taken sick during this time and wasn't that the last bit of work of surveying your father did? A. Yes, sir, that was about the last.

Q. Did you do the field work on this survey? A. Yes, sir.

## Redirect examination.

By Mr. MERILLAT:

Q. Please state whether or not your father supervised the work?

A. Yes, sir, he did.

## Recross-examination.

By Mr. THOMAS:

Q. How do you mean supervised? A. I run by all of his orders.

Q. That is, he gave you directions? A. Yes, sir.

Q. Then you did the running and reported afterwards to him. A. Yes, sir, afterwards to him.

152 W. J. LATIMER, JR., testified:

By Mr. MERILLAT:

Q. What is your age? A. My age is twenty-four.

Q. And what is your business? A. Surveyor.

Q. Where? A. In Maryland and the District of Columbia.

Q. What, if any, official position do you hold in Prince George's County? A. I hold the position of County Surveyor.

Q. Please state, what, if anything, you did in connection with the survey of the Ball tract and what connection your father had with what work you had if any? A. Well, he had full direction over the work. It was done entirely under his supervision, and all I did was to make the computation of the field notes as they were brought into the office and to see that they conformed with surrounding papers and kept within the boundaries that were called for by the field notes.

Q. Who supervised your work, if anyone? A. My father.

Q. Who made the map? A. I did.

Q. Under whose directions? A. His.

Cross-examination.

By Mr. THOMAS:

153 Q. As I understand it, your part of this work was simply that you compared the papers? A. Compared the papers.

Q. You did none of the field work? A. No, sir.

Q. You were not present when the field work was done? A. No, sir.

Q. You do not know personally who did the field work of your own personal knowledge by being present? A. Well, of course, not. I think I am safe in answering that question in that way because I do not swear that I did the work, only they brought the notes into me.

Q. You said you had some papers that you compared the field notes that were brought to you by. What papers were they? A. They were the Magruder papers and the Osborn papers, and I forget the papers on the west side there. I mean on the west side. Was it Mayhew? Any how the names are on the map there. They are the map—that I returned to him.

Q. Did you have any papers besides the Mayhew and the Magruder, Osborne and Clagett papers? A. No, sir, I don't believe there were any more papers to be had. They surrounded the property entirely.

Q. Did you have any papers in reference to these tracts other than the field notes that had been made? A. Yes, sir.

Q. What did you have? A. I had these papers which I have just mentioned.

154 Q. But none others? A. I don't think I had.

Re-direct examination.

By Mr. MERILLAT:

Q. Please state whether or not you had the papers of all the surrounding tracts? A. I had all the papers—I had the papers of the surrounding tract except a small portion of the road. I had the papers of all the surrounding tracts except a small portion of the road which road we accepted.

Re-cross examination.

By Mr. THOMAS:

Q. How much of the road? A. Well, I do not remember.

Q. You do not remember the part of the road, do you? A. Why I think it was the eastern end.

Q. About how many feet? A. I would not say until I looked at the papers.

VINCENT RICHARDSON testified:

By Mr. MERILLAT:

Q. Please state your age and residence? A. My age, I will be twenty years this next May coming. I was nineteen this May gone by.

Q. Please state whether you are acquainted with Alfred Ball and his brother? A. Yes sir, I knew them all my life. Ever since I was old enough to know whom they were.

Q. What, if any, connection did you have with the Ball 155 tract, or what employment, if any, did you have there? A. With the property?

Q. With the property at Centerville? A. None whatever, sir; that is the property. I was only with him—well, as you see to wait on him. He sent for me on the first day of May. I was working at my place doing a little gardening—at least I was working for my brother. He was doing the gardening and I was helping him to do the work. He asked me to come up there and they were both sick; that is, one was sick in bed and the other one was not in very good health and so I went up there on the first day of May and stai-d there and attended to him—I think it was in June some time he died, and then I stai-d with the other one up to the sixth day of November—the night of the fifth or the morning of the sixth—he died about quarter past twelve. He died and then I took charge of the place and stai-d there up to the twelfth of December.

Q. What year was all this? A. The last year gone by.

Q. Were you continuously on the place? A. Yes, sir.

Q. From May to December? A. Yes, sir, I was on the place from May to December. At least I did not stay there all the time. I only went home for my meals. I stai-d there at night, but I did not stay there at night after the death of the last one.

Q. Have you any knowledge of Doctor Stewart coming there to hunt? A. Yes, sir.

156 Q. If so, state when it was? A. I could not tell you exactly the date when it was. It was in November sometime. What day I could not tell you.

Q. Please state in reference to the death of Ball, whether it was before or after? A. It was after, sir.

Q. Please state what occurred when Doctor Stewart came there? A. Why, I was left there to take care of the place. He gave me ten dollars a month.

Q. Who is that you say? A. Doctor Griffith.

Mr. THOMAS: Objected to as immaterial.

Q. What occurred when Dr. Stewart came down there? A. He was hunting on the lower part of the place one day and I went out there. I taken my gun and went out there and spoke to the Doctor and staid with him for a considerable time. I was living there and took charge of the place, and Doctor Griffith asked me not to let any one hunt on the place and not even hunt myself. I said to the Doctor, I said, "Doctor, Doctor Griffith has left me here to take charge of the place and asked me not to let any one hunt on it." The Doctor laughed and said, "Well, a fellow has got a right to hunt on his own place." The Doctor looked at me and smiled. So we goes ahead and hunts until noon, I think it was about noon, and the Doctor left us and the balance of the day me and another fellow hunted with the Doctor's dog, and where the Doctor went I do not know. I judge he come home. He said he was coming home.

157 Q. What, if anything, do you know as to any use or profit that was made out of that place from June up to the time you left? A. From June up to the time I left?

Q. Yes, sir. A. No profit whatever that I know of.

Q. What, if any, wood or anything was cut? A. No, sir, not a stick of wood was cut. There wasn't anything sold off it. There was one lady who went in there and picked huckleberries and Doctor Griffith had her arrested. That was about all that went off the place during that time.

Q. During the life time of Ball, from the time you went there in June—early in June and up to the time that Ball died did he make any effort to sell any wood from the place or to use the place? A. No, sir, there were several came to him who tried to buy the wood but he told them he didn't have the right to anything, it was in a company now and he was afraid to do anything of that sort. That is the reply I have heard Ball tell dozens of them who come there to try to buy wood.

Q. What do you know as to whether or not Mr. Leapley at any time tried to negotiate for the place? A. I know of Mr. Leapley coming there some time—if I am not mistaken it was in April or May. I do not know which it was. It was before the death of Mr. Jim Ball, the first one. He tried to buy from him and asked him if he would take forty dollars an acre and he said, "No, sir, he could not do it and he had put it in Doctor Griffith's hands and he

158 could not sld it now under no circumstances." That was a reply I heard him make.



## Cross-examination.

By Mr. THOMAS:

Q. Who was that conversation with? A. With Mr. Leapley and Mr. Ball.

Q. Which Ball? A. Jim Ball, the first one.

Mr. THOMAS: I object to anything at that conversation.

Q. Mr. Richardson, when did you say you left there? A. When did I leave? It was the tenth of December.

Q. And you had been employed by Doctor Griffith? A. Yes, sir.

Q. After the death of Alfred Ball? A. Yes, sir.

Q. Now, when did you see Doctor Stewart down there? A. It was some time——

Q. Before you left? A. Did I see him before I left?

Q. Yes, sir. When did you see him on this hunting trip? A. It was some time in the month of November, but what date I could not tell you.

Q. Was it before or after Alfred Ball's death? A. After the death of Mr. Alfred Ball.

Q. What time of day was it, do you remember? A. I guess it was——

159 Q. That you first saw him? A. It was probably eight or nine o'clock when I first got to where he was. That is the best I could judge it was. I do not know exactly. I was not paying any attention to such a thing.

Q. He was hunting? A. Yes, sir.

Q. Did you learn from him what other place he had been hunting on? A. No, sir, I did not.

Q. Now, you say that you heard Mr. Ball several times—dozens of times say that he could not allow anybody there, that he had a company to sell this land to? A. Yes, sir, I heard him say that it was in the hands of a company and he could not allow anything to go off the place. He would not think of such a thing.

Q. About what time did Alfred Ball make these statements? About how long before he died? A. It was along about sometime about a month or a month and a half before he died or sometime. I heard him long before—'long in the spring and after the first one, his brother, died. My own brother tried to come there and buy wood and he laughed at him.

Q. Is your brother one of the persons he told this to? A. Yes, sir.

Q. That he had sold it to a company? A. Yes, sir.

Q. When did the first Ball—Jim Ball die? A. He died  
160 sometime in June, but what time it was I could not tell you. It was the 29th, I think it was.

Q. You think it was the 29th? A. Yes, sir.

Q. And you heard Alfred Ball make these statements after the death of his brother? A. Yes, sir.

Q. Up to within a month of his death? A. Yes, sir.

Q. What company did he refer to? A. I never heard him say. He did say oil company.

Q. Oil company? A. That is all I ever heard him say, oil company.

Q. Oil company? A. Yes, sir.

Q. How many times did you hear him say or mention that he had sold it to the oil company? A. That would be a pretty hard question to answer.

Q. More than once? A. Yes, sir, I have heard it more than once.

Q. Several times? A. Several times. I could not begin to tell you just how many times.

Q. That is, several times after the death of James Ball and before his own death? A. Yes, sir.

Q. Within a month of his own death? A. Yes, sir.

161 Mr. MERILLAT: I want to offer in evidence the certificate of the clerk that J. Alfred Ridgely is a Justice of the Peace down there in Maryland and want it to be filed as an exhibit.

Said certificate is marked complainant's exhibit A-18.

Mr. THOMAS: That is all right. Now, in response to the call made by Mr. Merillat for the check paying for the recording of the contract between the parties mentioned in this case I produce that check, being check dated June 29th, 1903, drawn on the Columbia National Bank to the order of James B. Belt for \$1.25 made the Maryland Oil and Development Company and signed by its president and treasurer and endorsed by the payee and the banks through which it came and paid at the Columbia National Bank July 11th, 1903.

Mr. MERILLAT: I ask that this check be filed.

Mr. THOMAS: Do you want it filed or copied?

Mr. MERILLAT: It will be preserved necessarily by the Examiner, you know.

Mr. THOMAS: All right.

Said check is in words and figures following, to wit:

WASHINGTON, D. C., June 29, 1903. No. 94.

The Columbia National Bank of Washington

Pay to the order of James B. Belt, \$1.25 One 25/100 Dollars.

MD. OIL AND DEVELOPMENT CO.

WM. W. STEWART, *President*.

Q. C.

R. C. BAUGHMAN, *Treasurer*.

162 Printed in left hand corner of face: Maryland Oil and Development Co.

Endorsements: Jas. B. Belt.

Pay to any Bank, Banker, Bankers or Trust Company, or order. Previous endorsements guaranteed.

First Nat. Bank of Southern Md. Upper Marlboro, Md. W. S. Hill, Cashier.

Lewis Johnson & Co.

Bankers.

July 11, 1903.

Paid.

Washington, D. C.

Mr. MERILLAT: This closes our case.

*Testimony of the Defendant.*

By GEORGE R. LEAPLEY.

OCT. 1ST, 1904.

By Mr. THOMAS:

I am 58 years old, and have resided in Prince George's County, near Meadows, about thirty-three years, which place is also called Centerville.

You might consider me a farmer, but I genreally dealt in live stock until I was employed by this oil company. I worked for the Maryland Oil and Development Co. all last summer and a great deal of this summer; off and on you might say a year and a half I worked for them leasing lands in Prince George's County and Charles County. I could not tell you how many leases were made by

163 the company in Prince George's County, although there were a great many. Over objection by complainant that it was immaterial witness said: Dr. Stewart, the defendant in this case, was president of the Oil Company during the time I was employed, and he traveled with me over Prince George's County at the time I was making these leases, or a great deal of the time.

I knew Alfred and James Ball, I suppose thirty years; ever since I was in the county, and I went to visit the Balls about leasing their land for the Oil Company by myself. The Doctor was not with me when I went there. (Meaning Dr. Stewart.) As far as dates are concerned I cannot tell how long that was before James Ball died, but it was, I supose, right smart while. I saw James Ball and Alfred Ball at their house on the property called the Ball property. I tried to lease the land from them; I went there to see them two or three different times; I could not get any satisfaction and finally they told me to go to see Dr. Griffith, they had turned their business over to him and if he would lease it, it would be satisfactory to them. I told them I wished to lease the land for the Maryland Oil and Development Co. It was known all over the county that I was leasing land for it. It was known by every body.

Objected to by Mr. Merillat as irrelevant & immaterial.

The Maryland Oil and Development Co. had their plant or land adjoining the Ball property at the time that I was visiting the Balls in reference to leasing their lands for the oil company. On the oc-

casions of these visits to the Balls I would spend I suppose a  
164 half or three quarters of an hour.

After I told them that I wanted to lease the property for the Maryland Oil and Development Co., and they referred me to Dr. Griffith, I saw Dr. Stewart and told him that they had referred me to Dr. Griffith, and he told me to go and see him and see if I could not lease it.

At the time I talked to Dr. Stewart about the Ball land, he was president of the oil company, and I was then employed by the oil company, and was seeing Dr. Stewart on the business of the oil company, and I consider myself employed by them to-day.

Objected to by Mr. Merillat.

About a week after I saw Dr. Stewart and had this conversation with him, I went to see Dr. Griffith, the complainant in this case, and he said he did not know whether they would lease it or not, that they wanted to sell their property. I told him that I was acting for the Maryland Oil and Development Co. and I said "Doctor, I tell you what I will do. I will bring the president down to see you and he will have a talk with you," and he said "All right, bring him down and I will be glad to see him." After that conversation with Dr. Griffith, I saw the Doctor—I kept on with my work, and I came to Washington and I told Dr. Stewart what Dr. Griffith said, and he said, "I will go down with you and see him." I carried him down and introduced him to Dr. Griffith as president of the oil company and told him he was representing the Maryland Oil and Development Company.

Then while I was there, Dr. Stewart tried to lease the Ball  
165 property, and Dr. Griffith said he did not think they would lease it, that they wanted to sell it, and then he talked to him in regards to an option on it and he told him he did not know whether they would—what they would do until he saw them. Dr. Stewart had another talk with Dr. Griffith and Griffith said that he wanted to sell the property and Doctor Stewart asked him if he had a power of attorney to sell it and Dr. Griffith said no he had not. Well, Dr. Stewart said, "you will have to get that the first thing you do," and he said "all right, I will get it to-day and meet you at Centerville about four o'clock this evening," and we went to Centerville and Dr. Griffith was not there, and I proposed to drive over to the Ball property about a short quarter of a mile, and Doctor—in the first place Dr. Stewart wanted to get an option on it, and I disremember exactly, but I know they settled on five hundred dollars. That is to be paid down. There was some talk about \$250 but I disremember about that exactly, but I know they settled on \$500.

Dr. Stewart was to pay \$500 down on the property and he had I think, five or six months to pay \$4000 or \$5000, and the balance of the time I disremember.

Q. Well, for whom was this option being purchased? A. For the Maryland Oil and Development Co.

Objected to by Mr. Merillat as incompetent and to the statement that it was an option since even the witness had not said that.

The WITNESS: The Doctor told him he was representing the Maryland Oil and Development Company; I introduced him to Dr.

Griffith as the president of the Oil Company and told him  
166 he was representing that company.

We went to Centerville and then to Ball's house, where we found Dr. Griffith and Ridgely, the magistrate; and Dr. Griffith came out of the house and called Dr. Stewart off to one side and had a talk with him. I suppose they talked together from twenty minutes to half an hour or something like that, and out of hearing of us. We could not hear what they were saying.

I never told Dr. Griffith as he has testified in this case at page 6 of the record "That Mr. Leapley came to me and told me that Dr. Stewart wanted to purchase this property and I told him, 'very well, if Dr. Stewart wanted to purchase this property I would get from Mr. Ball a power of attorney to sell the property,'" My business was to lease land and not to purchase it. Dr. Griffith never said anything about the power of attorney until Dr. Stewart asked him if he had it, and he told him he would have to get it and he did get it that day.

I had no conversation with Dr. Griffith before I took Dr. Stewart down there in which I told Dr. Griffith that Stewart wanted to purchase the property and in which Griffith told me he would get a power of attorney.

He never had the power of attorney until the day that Dr. Stewart went there. At least he said he hadn't it until Dr. Stewart went there that day. He said he hadn't it and he never mentioned the power of attorney until Dr. Stewart mentioned it. Dr. Stewart mentioned it himself. Told him he would have to get it.

167 Dr. Stewart and I went to see Dr. Griffith to lease the property, and not about the sale of it as Dr. Griffith testifies on page 7.

I don't recall anything about the following as testified by Dr. Griffith, that Dr. Stewart "Asked me what I wanted for it and what he could buy it for" and that he (Griffith) said "you can buy it for \$40.00 an acre, and that Dr. Stewart said 'well, I will take it.'"

I think that is a very quick sale, and I don't recall anything about it.

In the talk between Dr. Stewart and Dr. Griffith at that time he was to pay \$10,000 for 240 acres.

Dr. Stewart tried to pay \$250 cash, and Dr. Griffith told him he did not think the Balls would be satisfied with that, that they wanted more money and I think they settled on \$500.

Q. What was that \$500 for? A. That was an option on the farm.

Complainant objected to this as a statement of a conclusion where-upon defendant's counsel asked, over objection to the question as leading & suggestive if the word "option" had been used between Stewart and Griffith. The question was not answered. Witness continuing:

I know Mr. Latimer, senior, the surveyor, well, and have known

him ever since I have been in the county, thirty odd years. I would take him to be seventy-five or eighty years old. He was an old man when I came there thirty odd years ago.

Mr. Latimer, senior, was not present during these interviews between myself, Dr. Stewart and Dr. Griffith. I say positively he was not.

I understood that this property contained 240 acres, and do not remember anything being said during the conversation between Griffith and Stewart about this containing 275 acres.

Objected to by Mr. Merillat.

In reference to Dr. Griffith's statement on page 18, (referring to Dr. Stewart "he came to my house that day and he said 'the tract contains, I believe, about 240 acres.' And I said, 'I think the assessment books will show about 240 acres,' but Mr. Ball said—Alfred Ball says, 'that there is nearer 275 acres than 240.' Dr. Stewart said 'that will be settled then by a survey.' I said, 'we would agree to that.' Ball said, 'It is nearer 275 than it would be 240' ") I say that it was claimed that there was 240 acres in it, but the survey he says—the Doctor told him, he said 'we don't know where the points are or the corner stones or anything else and we only say we can find those corner stones by having the land surveyed. We don't know where the land run to." There was to be a portion of the land reserved—an acre I think there.

There was nothing said at that conversation about 275 acres. 240 acres was all I heard in regards to the Ball property.

Mr. Merillat objected.

And the survey was to be made to establish the line. It hadn't been surveyed for years and they said—the Doctor told him, "I don't know where the lines are and nobody else, and you will have to have that surveyed to show me the lines."

Dr. Stewart did not say anything during this conversation, at which I was present, to the effect that this property was the natural outlet for his property, or the property down there referring to the Maryland Oil and Development Co. property. You cannot get out over that property.

Dr. Stewart did not state, (in my presence) as Dr. Griffith testified at page 23 of the record, that he (Dr. Stewart) wanted this property for himself and that if the oil did not materialize that he intended to subdivide the property and make other use for it and that he wanted it for himself. While I was there Dr. Stewart did not say anything about subdividing the property, nor did he say at any time that he wanted the property for himself, but said he was buying it for the company. That is what he told me. He did not tell Dr. Griffith, in my presence, that he was buying this property for himself, and I was there pretty much all of the time. I was there all the time when Dr. Griffith was there, except when he called the Doctor away from the carriage when they were at the Ball house.

I was present at the whole of the conversation at Dr. Griffith's place; and I was at the Ball place, and heard all the conversation

they had there except when he came out of the Ball property and called the Doctor away from the carriage. That conversation lasted about twenty minutes or half an hour.

I suppose you could make an outlet of the Ball property from the Maryland Oil and Development Company's tract adjoining, with a great deal of expense, but they have better outlets. They would never make an outlet through the Ball property for they have got an outlet that has been there hundreds of years—a good outlet. They have got three outlets to it now. I come through the oil company as I come out myself. I have got a good outlet.

They have got a straight outlet from the well out to Centerville; a good road that has been there hundreds of years. They have an outlet leading out by Magruder's place, and they have an outlet leading out by the Garger's place.

I never knew a team to go through the Ball tract from the Oil Company tract. You could not do it because there are a lot of marshes and swamps there, and you cannot cross them.

I could not tell you exactly the time of day when this first conversation between Griffith and Stewart occurred, but it was in Griffith's house, in his parlor, where Dr. Stewart, Dr. Griffith and myself were present.

I suppose I was about thirty feet or something like that away from Dr. Stewart and Dr. Griffith when they had that conversation at Ball's. They were standing at a big tree there in the yard and they went over towards the well. Ridgely was standing at the carriage and I was in the carriage. Ridgely was standing at the carriage and had his foot up on the front wheel of the carriage talking to me.

When I first approached Dr. Griffith I approached him to lease the property. I simply was employed to lease and not to buy. I

did not tell him at that time that Dr. Stewart wished to buy the property as Dr. Griffith has said I did at page 36 of his testimony. Dr. Stewart told me that they did not want to buy any property at all. They wanted to secure all the leases they could and to go ahead and secure them. I could have bought all the property they wanted.

Dr. Griffith testifies at page 36 that "I never heard anything about an oil company and did not know anything about an oil company or oil business or transaction and did not know anything about him (that is Stewart) being connected with any such thing or anything about it," but I say that when I went to see Dr. Griffith I told him my business and I had then a written statement that I was authorized to lease land for the oil company and which was given to me up at the office of this gentleman here (indicating Mr. A. W. Thomas) and signed by Dr. Stewart as president and this gentleman here (indicating Mr. A. W. Thomas) as secretary. I have mislaid the paper, and I told him that I was employed by the company to lease land and when I introduced Dr. Stewart to him, I introduced Dr. Stewart as the president of the oil company and he is the gentleman that represents the company and I said, "we are trying to lease land"



and then I said, "he wants to talk to you awhile." That is the first I suppose of his ever meeting Dr. Stewart to my knowledge. I introduced him as the president of the oil company and I introduced the doctor, I suppose, to hundreds of people in the county and always introduced him as the president of the Maryland Oil and Development Co. and never any other way.

I have cultivated land in that county; I have been there, as I told you, for about thirty-three years, and some years I did  
172 not cultivate. I rented my farm out and had other business, but I have had it cultivated for thirty odd years.

My farm is about a short mile from the Ball land.

I have been familiar with the value and the character of land near the Ball land and the adjoining land in that county, ever since I have been in the county, thirty odd years.

On or about the 5th of June, 1903, I would not like to have paid \$10 an acre for the Ball land. I suppose it would have brought that. There is a farm that sold there, one of the finest farms sold in the county, and the only farm between that and the oil farm—one of the finest farms in Prince George's county, and it sold, one hundred acres for \$2805. I don't know but what that gentleman there sold it (indicating Mr. Roberts). That is the Woodyard farm, and was about the spring before last, wasn't it, Mr. Roberts? (Mr. Roberts says; Yes, sir.) It is one of the finest farms in the county with no exception.

I sold some land to the oil company about three years ago, at twelve dollars an acre, there were 200 acres.

As to my land compared to the Ball tract I say I can raise more on ten acres of that land than you could raise on the whole Ball farm.

Objected to — Mr. Merillat that all this testimony as to value was immaterial as to the legal status if because of oil excitement Stewart without misrepresentation bought at \$40 an acre and complainant moved to strike out all such testimony.

173 It is not productive land, but is cold and wet and part of it very sandy and marshy and swamps and grown up pines and a fire broke out on it and burned up what wood is on it. I consider it one of the poorest farms in the county.

The Armstrong land, which was said to be a tract of eight acres, and which sold for \$800, was just a building site.

The land was right on the turnpike. Mr. Armstrong was in the undertaker's business and he lived on his father's farm and his father died—his father died and the farm was sold and Mr. Armstrong had to move and he was compelled to buy a home and this was the only place that suited him and it was right on the turnpike. I think it was some eight or ten acres; just a small lot. It was right in sight of Centerville. You might say right in the village. It is considered Centerville where he lives. All right in the village there. And it is right in between the two roads, the road leading from Centerville to Alexandria and the road leading from Centerville to Washington right on the turnpike. It nearly all faces the turn-

pike. It does all face the turnpike. The Ball property is back of that.

I would not like to undertake to clear the Ball property for cultivation. In my judgment, to make the Ball property susceptible for cultivation it would cost \$10 or \$15 an acre to grub it. The whole place is grown up in you might say a wilderness. A great deal of the land is swamps that you cannot cultivate. I suppose over a third of it is swamps. More than that I guess; half of it—swampy and wet land.

174 I know the land which was sold to Mrs. Parks, as I owned it once. It was adjoining what was called the Lum Pumphrey tract or farm. It is back off the pike. It was 18 acres, and I sold it to Pumphrey for \$300 and I got a big price for it.

I sold that land to Pumphrey about 18 years ago, for \$300, Mrs. Parks of course was a town buyer and did not know anything about the value of land. She came down there herself and being a woman, Lum sold her this property and got payment on it I think. I have heard he sold it to her for \$1200; but I think that I got more than it was worth.

Objected to by Mr. Merillat.

It was not sold at public auction; it was sold at private sale.

Objected to by Mr. Merillat.

That 18 acres of land at the time Lum Pumphrey sold it to Mrs. Parks, was not worth as much as when I sold it to him. It had gone down and washed all to pieces. He let it go down. I have heard her abuse him a good deal for the advantage he took of her.

Objected to by Mr. Merillat.

Cross-examination.

By Mr. MERILLAT:

The Woodyard property out there that was sold and brought \$2805 for one hundred acres, was a public sale. I could not tell you whether in two or three months after he bought it, Mr. Richardson got an offer of \$6000 for that farm. You can hear anything.

175 Now I heard again that he went to see the man again and he told him he did not want the farm. I am answering questions of what I have heard, you are asking me to answer questions that I have heard. I am not here to give you hearsay. I am telling you what I know positively. Now, I heard that he was offered \$6000 and I heard that he went to the man and the man refused to take it. I advised him to sell it. I do not know that when the man came to Mr. Richardson and offered \$6000 that Richardson did not want it and would not sell. I heard the man offered \$5000 and he asked \$6000. I advised him to sell. I heard that he offered him \$5000 and he asked him \$6000 and I advised him to sell, at \$5000. In reply to your question "Isn't the great trouble with a large part of the lands in Prince George's County that they do not get moisture enough and are too dry," I say that it is not the

case with my farm. I suppose on a hill or something like that it might be dry. In a dry spell or drought any land will suffer for rain.

The best land in that county is not the land that has been swampy and which has been properly drained subsequently. You take a low piece of land and in case of a drouth it suffers worse than high lands. But some of the land in that county which was swampy or low and subsequently drained is the best and some is not. You take a black swampy land or a black loam—soil that is wet and you drain that, or you take a sandy, marshy soil and drain it, and you have got nothing but a sand bank. My farm is a loam soil; and it is a good farm. It is about a mile from Ball's place. I

176 have different soils. You take some of my land—one field will produce eight or ten barrels of corn to the acre, and then

I have got another that would not produce more than five or two or three. You will find the farms in Prince George's County are not like the farms in the upper county. You will find two or three different soils on one farm. My land lays just about rolling, just about enough. It is not hilly. I haven't a hilly farm. My land lays just rolling good sir. The Ball farm lays flat, pretty much all flat. The soil is what we call cold—some of it—cold liver land. You can stand and shake it for fifty feet around you. Part of it freezes in the summer and thaws out in the winter as the saying is. I never saw any loam soil on the Ball farm. Never since the world existed did the Ball farm grow some of the best crops of tobacco in that county. Not in Henry Ball's lifetime. That farm never grew the best tobacco in that county. I don't think they ever made but two barrels of corn on it an acre.

I never saw one hundred acres of that land under cultivation during Henry Ball's life time. I have passed down that road when the water was nearly knee deep on the level in the road after a big rain. It has got a little drain to it, that is the trouble. The Ball farm lays more in a basin than any of the rest of the farms, but really all that road in there is generally low and wet. The Magruder farm is farther off than the Ball farm. It lays more rolling. The Magruder lines run right to the Ball land, but run back. The Magruder farm is an ordinary farm. The Osborne farm is pretty much the same kind of land as the Ball property. That is all in

177 woods there. The Jim Pumphrey farm is all pretty much wood land in there. It is not a good farm. Now, Jim

Pumphrey owns two farms, but the one adjoining the Ball tract is not a good one.

Enos. Pumphrey owns no farm, but he owns a small tract of land right in there. I don't know what Jim Pumphrey got for his farm. I think it is between the Ball property and the oil well if I am not mistaken. I don't know how many acres are in it. I don't know whether or not it sold for \$22.50 an acre. I think the Jim Pumphrey tract, known otherwise as the Fraser tract, was sold to the oil company. I think it was. I don't know positively. I think it was though. I could not tell you whether that joins the Ball property. I don't know the lines of the Fraser property, nor the Jim Pumphrey

property. I told you there was a big tract of wood land in there and that was owned by the Pumphreys and Claggetts, and I don't think they ever knew the lines themselves.

My business with the oil company was to acquire land for it in one way or another, but I never interfered right in there. I generally went farther out, although I was connected with the oil company and lived in that neighborhood, and although the oil company bought this farm (Pumphrey) I did not know what price they gave. I never was authorized to buy, and had nothing to do with anything but to lease lands. That was what I was employed to do. I did not hear from the oil company officials what price they paid and don't know that they even struck oil there. They have got a well and several people have asked me if they got any oil, and I said "I cannot tell you." The oil company, I think bought about 1000 acres of land. They bought 200 acres of me.

178 It is in Prince George's County. That is all I can answer. It is in Prince George's County. It is near Centerville. The Ball farm is, I suppose a short mile through to the 200 acres I sold the oil company. If it was not for the trees you might say it was in sight of the oil well (the 200 acres I sold). It adjoins the land. Yes, it is practically a fact that all of that 1000 acres of land is within two miles of the Ball farm—the 1000 acres that the oil company bought. All practically around there, this 1000 acres was bought. When we leased land we gave one-eighth of the oil. We gave one-eighth of all oil produced and saved delivered free of expense in tank or pipe line, and we gave \$1 for entering into the lease as the price. Just \$1. The lands leased was all further away from the lands the oil co. owned than the Ball place. Never took any lands simply on option. Didn't take any option on any land. That was the only form of option taken to my knowledge. In my dealings down there I know of no instance at which they attempted to procure an option except this one instance. Could we have possibly leased it? I do not know that the Balls positively refused to lease that land at all. I tried to lease it and they referred me to Dr. Griffith. They would not lease it to me. They referred me to Doctor Griffith and said they were sick and were unable to attend to their business, and had put their business in Doctor Griffith's hands and referred me to him. They were illiterate people, and all their affairs were in Dr. Griffith's hands. When I talked to them on the subject of lease, they did not say they would not lease, they just referred me

179 to Doctor Griffith, and they would do whatever he agreed to. I know Dr. Warren, but I don't know that he tried to lease the land and they refused. I never met him there at the Balls.

I know Scott Armstrong, and say that his general reputation in the county is pretty good. It ought to be good. He sold me (3) ducks for 60¢ and they went up to 70¢ and he would not let me have them. His reputation ought to be good. My business is not that of horse trader; I have been dealing in cattle. I am a cattle trader, but not a horse trader. I bought cattle for some of the largest firms in this town and I have bought cattle for some of the largest firms in Baltimore city.

It is only hearsay that Mrs. Parks paid \$1200 for that farm. Not that I know of. I have heard it. I cannot even say she told me so either, but I have heard it. There were 18 acres in it. I heard she bought it for 20 acres, and that afterwards Lum Pumphrey made her a present of two acres to make out the 20 acres. She said he didn't do it. He gave her two acres running out to the pike. The title that she got isn't worth the paper it is written on because I own one-half and my brother owns one-half, and no one knows it better than Mr. Roberts. I am referring to the two acres. The 18 acre title is all right, but the two acres he made her a present of, and on which she has built her house, the title is not good.

I don't know that the only outlet or road from that 18 acres for which \$1200 was paid is through a private road or road by prescription. I cannot tell you positively whether that is a private road.

I think though there is an outlet reserved there. I might be  
180 mistaken. Asked further if it were not reserved in the very deed he made to Pumphrey witness said: I do not know. I don't know, but I think it is reserved in the deed which I made to Lum Pumphrey. I won't say positively. It may be reserved in the deed from me to Mary Jane Nourse, (the Richardson property). I won't say positively. I don't remember. I think it is. The land is off entirely from the oil company. From the Ball tract it is different outlets, a mile. I know that Mr. Pumphrey tried to close that road when Major Brummell owned this property of the oil company, and he later went down to Marlboro and they made Mr. Pumphrey open the road again. He could not close it. The county does not improve that road at all, nor does not undertake to do so. The county undertakes to improve public roads some time, but not very much of the time. I don't know whether you would call it an outlet that the company has over a private road. The outlet is there, but I do not know that it is a private road. They cannot shut it up. You ought to know about that better than I because you are a lawyer. That road has been there hundreds of years. They cannot close it up. They are public roads to one extent, because there are several lots in there and everybody hauls over those roads. I could not prevent a man from hauling over it. The county don't improve them. I keep my road up myself. The county undertakes to keep up the road on which the Ball property fronts.

It has a frontage of between a quarter and a half mile. Its nearest frontage on the road is a couple of hundred yards from the pike,  
200 or 300 yards. It comes right out to a corner, but this  
181 gate is where they come out from the house—such a house as it is. There is a little shanty on the place. I reckon it is pretty close to a quarter of a mile. Asked if the frontage on the road and the pike was not one of the chief things that made value witness replied the Alexandria Road in the winter sometimes is impassable.

Q. Impassable between Ball's place and the pike? A. And Red's corner. That road leads to Red's Corner. I have seen it impassable—up to the axle. I have seen water in that road knee deep.

Asked if Red's Corner was not some distance away & not in the direction you would take to go to Washington witness said: When you leave Centerville that road leads direct to Red's corner. To go a direct road from Ball's property to Washington is to take that Alexandria Road until you get to a road leading to Suitland, and come straight through what you might say by Rude's farm to Suitland. A good many people want to take that road to come to Washington. You could take that road. That road was opened up in opposition to the turnpike then. It was opened in opposition to the turnpike. It was opened up by Enos Pumphrey and myself, and it is said to be a nearer road.

It was surveyed by Latimer. The quarter of a mile from Ball's gate to the pike is not so bad. It is generally a right good road, but in the winter when it is freezing and thawing—it is not a gravel road. The pike is a good road. After you traverse that quarter of a mile from Ball's gate to the pike you get to a good road leading directly to Washington or Marlboro; and Red's corner is up at the opposite corner. I simply told you that that road going

182 through there from Centerville—that road leads directly to Red's corner. Asked if for 144 acres of the Pumphrey farm the company did not pay him \$22.50 an acre witness replied he did not know the acreage. I expect that the Jim Pumphrey-Fraser farm, which the oil company bought adjoins the Ball farm, but I won't say for certain. I do not know the boundaries in there. I do not know but what the Osborne farm comes in between them and the Ball property. I live about two miles from the Ball property. If you lived where I lived, and you knew the property, and you lived there 100 years you would never go on the Ball property or the Jim Pumphrey property. I have been fox hunting through there and to get through the brush and bushes there you would have to get off your horse. The Jim Pumphrey farm is all wood land. A fire occurred there and burnt off all the wood which made it worth less than it was before. I cannot tell you whether the oil company paid him \$122.50 an acre for 144 acres. I have been fox hunting through there and that is the only way I got acquainted with the place. I have made \$100 a day but not working for the oil company. I was working by the day when I worked for the oil company. I was working only by the day. I thought you asked me if I did not make \$100 a day. No, sir, I worked for the oil company for \$5.00 a day.

I did not get any pay proportionate to the number of leases I got, from the oil company. I worked for \$5.00 a day and my expenses. I don't know that that is a fair question to ask me if I worked for anybody outside of the company. You might ask me how much

183 I made on a head of cattle. That is outside of the company.

I do not know that I was brought here to be questioned outside of the company. I worked for Capt. Lucas. I do not know whether Lucas turned the leases I got over to the company. I don't think you ought to have any right to inquire into my business outside of this oil company. I refuse to say what was the arrangement.



I worked for Doctor Stewart, the president of this company for five dollars a day and my expenses to secure leases for the oil company. I worked for Mr. Lucas. It was not for the oil company. I do not know that I have a right to answer any question outside of this oil business. I was not working for other connections or for other people and serving two masters; that is not the same thing. I was not working for the oil company when I was working for Capt. Lucas. I don't know whether Capt. Lucas was connected with the oil company in any way or not. You know as much about whether he is an oil man, an oil expert, as I do. I never saw Capt. Lucas more than a half dozen times in my life. The leases were taken in the name of Capt. Lucas. I turned them over to Capt. Lucas and he paid me. That is all I can tell you about it. I don't know what he done with them. Yes sir, those leases were taken in Lucas' name.

Leases called for and argument by counsel.

I did not get the Lucas leases on a per day compensation, I got a percentage. I could not tell you what land within a mile of the oil well or the boring was leased for the oil company. I went farther off. I did not lease them right around the well. They  
184 bought 1000 acres right around the well before they commenced operations. I don't think they have bought any since. There is a farm adjoining this Woodyard farm. I thought positively—no, sir, I don't think Mr. Roberts had the sale there. The west farm I think can be bought for \$20 an acre. I think Dr. Richardson bought part of it and gave it up. I don't know myself that the oil excitement in the year 1903, especially in the spring and summer of 1903, had any effect on the prices people put on their lands in and around Centerville. I did not see any. I did not see that it helped the sale of land in and around there; none at all. People had no faith in it. A very few might have. When they leased the property they simply laughed at the idea and said that that would be the last of it. I would have sold out very readily had there been any excitement. I offered to take \$10,000 for my place and I have got, I know, six or seven thousand dollars' worth of buildings on it. There are 125 acres in my place, and I wanted \$10,000. I have 1000 peach trees, 400 apple trees, all in bearing, and 600 Keefer pear trees, two years old.

Motion to strike out all mention of trees.

The nearest part of my farm to the nearest part of the Ball farm is about a mile. After you leave my place about a half mile the land begins to get swampy coming towards the Ball farm. There is a great deal of swamp between my farm and the Ball farm.

I am not on the pike. I face the road leading from Mellwood to Surrattsville. My land lays on the road leading from Mellwood to Surrattsville.



185

OCT. 4TH, 1904.

GEORGE R. LEAPLEY.

By Mr. MERILLAT:

I think that Red's corner is about three miles from the Ball place. The mail carrier does not go over all of that road every day in the year. He only comes over a part of it. He comes from Forrestville down to that road and then comes to Centerville, but just above where the mail carrier comes down—you see this road goes to Suitland. There are two roads, one goes to Forrestville and the other to Suitland. It doesn't go from Red's corner to Centerville. It travels the Washington Road down by Red's corner. Of course they get mail there from Washington. To go from Centerville to Red's corner you don't travel over that road only a short distance. No sir, I never killed a chicken and carried it to Ball's house and after presenting him with the chicken, endeavored to get him to sign an agreement with me concerning this land of his. I never wanted him to sign an agreement. I simply wanted him to lease this land. That is all. I went up there and Mr. Ball said he could eat something that was cooked and brought to him and my wife broiled him a chicken and I also carried him some canned peaches. I talked with him before I carried him that. The first time I went to see him he told me that he was very weak and said he thought he could eat something of the kind. It is customary when there is a sick person anywhere in the neighborhood always for country people to send them something.

186 Ball did not tell me that he would not lease the land but that Griffith had it to sell—he said—he did not say that Griffith had it to sell. He had put his business in Mr. Griffith's hands. I only saw Dr. Griffith once in reference to the property before Dr. Stewart came down. I don't think I saw him but once sir. Before Dr. Stewart came down I went to Dr. Griffith and told him that I had seen the Balls and they referred me to him and that I wanted to get a lease on the property, and wanted to know whether he would lease it or not. He said he did not think they would lease it. He said he thought they wanted to sell it and then I told him, I said, "I will bring the president of the company down to see you, Doctor, maybe he can explain things a little plainer than I can and see if you can do business with him." He said, "Bring him down, I will be glad to see him." I said I would bring Dr. Stewart to see him, Dr. Stewart, president of the oil company. I am sure that I specifically said "president of the oil company." I knew at least that Dr. Stewart was a stranger to him and that is why I told him he was the president of the oil company to let him know who he was.

Q. Is it not a matter of fact that Dr. Stewart himself bought one or more tracts of land in and around Centerville? A. Not ~~that~~ I was with him, sir.

Q. Don't you know as a matter of fact that Dr. Stewart is the owner of land right near Centerville and this oil property personally?

A. I think he does. I do not know for certain, but I never bought any with him or never tried to buy any. This Ball property  
187 is the only property he ever had any dealings of the kind while I was with him.

Q. Don't you know that Dr. Stewart had bought other lands? A. I heard of it.

Q. Near this oil property? A. I heard of it.

Q. I am endeavoring to finish the sentence. That Dr. Stewart bought other lands near this oil property prior to the date of the purchase of the Ball property? A. I say I heard he had.

Q. Had you any such information from Dr. Stewart himself? A. Yes, sir.

Q. He had told you that he had bought other lands near there? A. Yes, sir, he had bought a piece of property right there from Mr. Berry. I think so. A small place.

Q. He bought it personally? A. I think he did. I cannot tell you positively. I do not know.

Q. Didn't you as a matter of fact aid him in some way in procuring it? A. No, sir, in no way at all. I don't think I was ever on the place. I might have passed by it, but I never was on it at all.

Q. I will ask you whether or not you have not stated either to Lum Pumphrey or Enos Pumphrey, or perhaps both of them, that Dr. Stewart had bought this Ball property for himself? A.  
188 Well, now, I might have done that for I will tell you why, I was leasing land and if I hadn't gone around there and told them that Dr. Stewart bought this land for the company people would have stopped leasing to me. I might have told them that he bought it because I knew simply as a matter of business that if parties thought they could sell their land—their farms they certainly would not have leased them because I could have bought half the county—bought it very cheap too.

Q. Please state—— A. I don't say positively that I did tell them so, but I might have done so.

Q. I ask you the question if you did not tell the Pumphreys, one or both of them, that Dr. Stewart had bought this Ball property for himself?

Mr. THOMAS: I object to this re-iteration and additional expense and I further object because the primary rule of evidence is that the time and place of any alleged conversation must be laid.

A. I say I do not remember of telling them, but I might have done it. If I did it was simply a matter of business so that I could lease other land because parties knowing that they could sell their land would not lease it because everybody wanted to sell.

Q. My question was not whether you had told them that Dr. Stewart had leased the land, but whether you had told them that he had bought it? A. I do not know but I might have done it.

Q. When was it that the oil company, if you know, or  
189 approximately when, bought the Pumphrey-Frazer property?

A. I don't know anything about it, sir.

Q. I will ask you whether or not it was not before the boring be-

gan? A. I just told you I did not know anything about the sale of it whatever.

Q. I will ask you whether or not at this same conversation with the Pumphreys you did not tell them that Stewart had said that he would make Griffith pay back the five hundred dollars? A. I don't remember of having such a conversation with the Pumphreys.

Q. Now, please tell the conversation that occurred on both sides when you and Dr. Stewart and Dr. Griffith met the first time to talk over this deal? A. Well, when they met I introduced Dr. Stewart to him as the president of the Maryland Oil and Development Company and told him that he would like to get a lease on the Ball property and he simply said that he did not think that they would lease it; that they wanted to sell it and the Doctor asked him what they wanted for it and if I am not mistaken he said ten thousand dollars and the Doctor told him—talked to him then about an option on it and wanted to get an option on it and he told him—wanted to know what was the lowest they would take and he said he could not tell until he saw them and then the Doctor asked him if he had a power of attorney and he said “no, sir,” and the Doctor said, “you will have to get that before you can do anything.” And he said, “I

190 can get that to-day.” And the Doctor said, “that is what you will have to do first.” So they made arrangements then to meet at Meadows and Dr. Stewart wanted I think to pay him \$250.00 and he wanted five hundred dollars when they met. And we drove up to Meadows where they were to meet and Griffith was not there and I proposed to drive over to the Ball property. We drove over there and Dr. Griffith and Ridgely, the magistrate, they both came over—Griffith, if I am not mistaken, was in the house. If he was not he went in after we got there. We stood there at the carriage and then Dr. Griffith came out and called the Doctor away from the carriage and he took him off I suppose about thirty feet and left Ridgely and I at the carriage and what they talked about I could not hear.

Q. Now, I would like you to state whether or not at this conversation that you had with Griffith prior to the appearance of Dr. Stewart, Griffith did not tell you that he did not have a power of attorney from the Balls but that he could get one at any time? A. Nothing, sir. Nothing was said about power of attorney because I did not know that he had to get one even. That was something I did not know anything about.

Q. My question was if he did not tell you—

Mr. THOMAS: He said he did not know.

A. I don't remember of telling him anything of the kind. The first thing I ever heard of a power of attorney was when Dr. Stewart told Dr. Griffith he would have to get one.

Q. When you and Dr. Stewart met Griffith at his house and Dr. Stewart brought up the matter of the Ball property didn't Dr. Griffith say, “I can talk with you, but I cannot make a *bona fide* sale because I haven't any power of attorney, but I can get one at any moment?” A. No, sir, Dr. Stewart was the first man that mentioned power of attorney. I think Dr.

Griffith was Judge of the Probate Court down there at one time. I don't say positively. I don't know whether he was Judge of the probate court there or not. I cannot answer that question. I don't know. He has not to my recollection had considerable dealings in land in that county. I don't know of any land that the Doctor owns in the county except a little home he has got there. He has not represented estates and other people in dealings to any extent that I know of. It is news to me. The only one I know of whom he represented was a relative of mine. As to him being chosen in preference to me, I say I did not want it. I could tell you something else, but I guess I better not. It is private.

After the conversation concerning the power of attorney at Griffith's house Stewart did not turn to Griffith and say: "What will you take for the property," and Griffith did not say: "I will take \$40 an acre" and Dr. Stewart did not reply: "That is all right. I will take it." I think sir, that they wanted, or I think the price was Ten thousand dollars for the 240 acres. That is the way I understood it. It is not true that the only price ever talked about between these people was an acre price and nothing else. As far as I could understand it, it was \$10,000 they wanted for that property.

There were 240 acres and one acre to be reserved. There  
192 was nothing said about the price per acre to my recollection.

No sir, I don't think I said the price was to be \$40 an acre in my direct examination. I know that would be on an average of about \$40 an acre for the property. That is generally the way. Now, in selling a farm, if we sell a farm down there of 100 acres for \$510 we would sell it or say it is about so much an acre, but still the \$510 is expected to be paid for the farm.

I think that after the conversation as to the price Stewart said something like "I will give you \$250 cash, and the balance of one-half of the purchase price in six months." But I could not tell you whether Griffith replied "No sir" that Ball would not take less than \$500 cash and one-half of the purchase money in three months. I could not answer that question because I do not know, but I think when he went—I don't think the price was settled on or the time until Dr. Stewart saw Griffith at the Ball house.

There was a conversation at Dr. Griffith's house as to the terms, and the amount that was to be paid down, but they did not settle on it. Dr. Griffith told Dr. Stewart that he did not think that Ball would take less than \$500 down and wanted one-half of the balance in three months. That is what he said. He did not know positively. He did not know until he saw Ball he said and had a talk with him.

Dr. Stewart asked Griffith "When can you get the power of attorney?" and Dr. Griffith replied that he could get the power of attorney right away, but I don't know whether Dr. Griffith asked Dr. Stewart where he was going, and if he was going to Washington. I don't know as Dr. Stewart told him he was  
193 going back to Washington that day, but the Doctor told him he would meet him at Centerville or Meadows, but

whether he told him he was going back I don't remember. The Doctor said he would, and Griffith said he would get the power of attorney and meet the doctor. It was agreed upon that they should both meet at Meadows. The time fixed to meet at Centerville or Meadows was I think, four o'clock. It was in the neighborhood of that. I think it was after three o'clock. We got there about four o'clock and Dr. Griffith was not there, and we drove over to the Ball property because we aimed to get there just at four o'clock. It was no use to go there and have to wait, but we aimed to get there just about four o'clock. At the Ball property Dr. Stewart and I did not remain in the carriage and talk with Griffith, nor did Dr. Griffith stand on the side of the carriage and talk with us. He took the Doctor off, and I don't know what conversation occurred there then. When we drove up Dr. Griffith did not say that there had been, he found, another party to see Ball about this land since he, (Griffith) had been there, and that there was another party then inquiring about the land—I never heard anything of the kind. But I think that Dr. Griffith did say to Dr. Stewart that the best they could do was to offer him the purchase of the land at \$500 cash and the balance of the one-half of the purchase money in five months. I think that was the agreement, that he was to give him \$500 cash and the balance of the purchase money in or about between five or six months. There was some specified time but I disremember now when. I don't think that Dr. Griffith said to Dr. Stewart, 194 at Ball's place, that the best offer he could make him was to sell him the property for \$500 cash and the balance of one-half of the purchase money in five months. I think that was what Griffith wanted before he went to Ball's—said the Balls would do that, but I don't think he said that at Ball's house, because I think when he came out to the carriage he spoke to us and he took the Doctor right off and talked with him out of hearing.

Dr. Griffith did not say to Dr. Stewart that Ball gave as his reason why he would not or was not willing to give him six months, he wanted it done in five months; that he was dependent on the wood and stuff that he cut for a living; and that he wanted it closed out in five months so that if Dr. Stewart did not keep his bargain and he had to try to force him to do it, that then he could cut some wood for the winter. I never heard that before from anybody.

Nor did I hear Dr. Stewart reply to Griffith's (alleged) statement that it was all right; that he would consider it his property and that Griffith replied that he would give him until Monday to pay the \$500. I did not hear that. That might have been said while they were out talking together, but I did not hear that. I don't know whether you would call it a final agreement or not that was made in my presence. Dr. Stewart and Dr. Griffith went to the Ball property for Dr. Griffith to consult Ball in regards to the sale of the property and when he came out of the house he took the Doctor off to one side and we could not hear anything they said. Neither Ridgely nor myself.

I don't suppose that they had effected a binding sale prior  
195 to that time, because that is what Dr. Stewart went there for,  
to get an answer.

My understanding of the conversation is as given in my direct  
testimony, viz: "we went to Centerville and Dr. Griffith was not  
there and I proposed to drive over to the Ball property about a  
short quarter of a mile and Doctor—in the first place Dr. Stewart  
wanted to get an option on it and I disremember exactly, but I know  
they settled on \$500. That is to be paid down. There was some  
talk about \$250, but I disremember about that exactly, but I know  
they settled on \$500. Dr. Stewart was to pay \$500 down on the  
property and he had, I think, five or six months to pay \$4000 or  
\$5000 and the balance of the time I disremember." That is cor-  
rect.

*Testimony of Mr. A. W. Thomas.*

OCT. 7TH, 1904.

By Mr. E. H. THOMAS:

My name is A. W. Thomas, attorney at law, and member of the  
Supreme Court Bar of the District of Columbia, also member of the  
Supreme Court bar of the State of Illinois, state of Texas and state of  
Connecticut. Practiced law about twenty years. I am not in any  
way related to the counsel for Dr. Stewart, Mr. E. H. Thomas, or  
associated with him in business in any way. I am, and have been,  
ever since its formation, the Secretary of the Maryland Oil and  
Development Company. I have known Dr. Stewart ever since the  
Spring of 1901. That is about the time when I commenced to live  
in Washington and I have had an office in his building  
196 during all of that time; originally with Mr. R. P. Evans and  
then in the office of the Maryland Oil and Development Co.,  
the rooms now occupied by Dr. Stewart in that building, and am  
now in room 307 of that building. I have been Secretary of the  
Maryland Oil and Development Co. ever since its formation in July,  
1902, and was connected with the syndicate which preceded that.

Mr. Merillat objects.

During the whole of the month of June, 1903, Dr. Stewart was  
president of the company.

Mr. Merillat objected — this was immaterial and incompetent.

Dr. Stewart was president of the Oil Company until several  
months after June; along I think, until the next January or some-  
where along there.

I kept the minutes of the Maryland Oil and Development Co.  
prior to and subsequent to June, 1903; and at all times have kept  
the minutes of the company and have been their legal adviser in all  
their transactions. The offices of this company, during the whole  
of the time of their existence, have been in the Stewart building.  
Originally in the office now occupied by Dr. Stewart, rooms 101-102  
and since that time my own room—the offices of the Maryland Oil



and Development Co. in 307 Stewart Building and are still there. During the month of June the offices of the Oil Company was suite 101 and 102, and Stewart's office was up stairs in his dental parlors. The Maryland Oil and Development Co. moved from rooms 101 and 102, a month, or two or three or four months ago when  
197 Dr. Stewart gave up the dental business. The Maryland Oil and Development Co. then had their offices in the same building at 307 and still occupied by them there. When they moved into 307 and Stewart left the dental business, he moved his offices into rooms 101 and 102, which he now occupies.

The check, offered in evidence, dated the 5th day of June, 1903, signed by Mr. Stewart payable to the order of L. A. Griffith as agent for A. W. Ball and brother for \$500, was the check taken by me to Dr. Griffith on that day in Upper Marlboro to carry out the agreement which Dr. Stewart had made with him in reference to the Ball land.

The money was advanced for the Maryland Oil and Development Co.

Objected to as incompetent and immaterial since Dr. Griffith did not know it and also in view of the written contract.

The Maryland Oil and Development Co. was short of the sum necessary to pay down on that land, \$500 arranged for by Dr. Stewart for the company, and the Maryland Oil and Development Co. on that day and at that time prior to the making of that check gave to Dr. Stewart a check for \$400 and Dr. Stewart loaned \$100 to the Maryland Oil and Development Co. making up the sum of \$500 and drew that check to accommodate the Maryland Oil and Development Co. in that matter. I have that check for \$400 and here produce it.

Objected to by Mr. Merillat as *res inter alia acta* & irrelevant and incompetent. It was agreed counsel should be considered as objecting to all this testimony as irrelevant incompetent & im-  
198 material on the ground complainant has no knowledge thereof.

That is the check on that occasion and that day given by the Maryland Oil and Development Co. to W. W. Stewart for \$400 and signed by R. C. Baughman, Treasurer.

Check produced and copied, and notice by Mr. E. H. Thomas that he will produce the check at the hearing.

Said check is in words and figures following, to wit:

WASHINGTON, D. C., June 5th, 1903. No. 92.

The Columbia National Bank of Washington

Pay to the order of W. W. Stewart, \$400.00 four hundred dollars.

MD. OIL AND DEVELOPMENT CO.

WM. W. STEWART, *President*.

R. C. BAUGHMAN, *Treasurer*.



Printed on left end corner: Maryland Oil and Development Co.  
Endorsed: W. W. Stewart.  
Perforation: Paid.

On a subsequent day Dr. Stewart was given by the company—this was on July 16th—a check for \$206 signed by Fred Briggs, who was then treasurer, and this \$206 included the \$100, which I have mentioned as having been loaned to the company on the 5th day of June, and also some other advances made by Dr. Stewart which he entered on this receipt which we took from Dr. Stewart at that time, being for the same sum including the \$100—\$206.

199 Check produced and copied, and notice by Mr. E. H. Thomas that he will produce the check at the hearing. The receipt is also offered in evidence.

Said check is in words and figures following:

WASHINGTON, D. C., July 16th, 1903. No. 106.

Central National Bank of Washington

Pay to the order of W. W. Stewart \$206.74 two hundred and six 74/100 dollars.

AF. LUCAS, *President.*

FRED BRIGGS, *Treasurer.*

Printed on left end: Maryland Oil and Development Co.  
Endorsed: W. W. Stewart.  
Perforation: Paid.

Bank stamp: Columbia National Bank of Washington, July 17, 1903, Washington, D. C.

Said receipt is in words and figures following, to wit:

Md. Oil and Development Co. in Acct. with W. W. Stewart.

Cr. Capt. Lucas.			
To team of Sinsheimer, Marlboro..	\$7.	To cash return of J. Bradley..	\$10.
To advance to Thomas Andrews' book store .....	1.50	" cash for cord wood.....	3.75
To tablets and books.....	10.00		
To expenses to Laurel, Md..	.95		
200 2 telegrams.....	1.14		
To lease E. W. Hill.....	1.25		
To advance.....	2.65		
To advance Leapley .....	50.00		
To " Ball option .....	100.00		
To rent due to Aug. 1st.....	55.00	Bal. due.....	206.74
	<u>\$210.49</u>		<u>\$210.49</u>

Received payment,

(Signed) W. W. STEWART.

The foregoing all was objected to on previous grounds & as self serving testimony.

That is Dr. Stewart's genuine signature and I have seen him write and I saw him write that. That is the bill made up in settlement

with him that time. That bill bore the same date as the check, but it has been torn from the files. It is the same date as the check here of \$203. That is the time the receipt was made out. I have the check book of the Maryland Oil and Development Company showing the stubs of these checks.

In this check book of the Maryland Oil and Development Co., there is stub 92 and check which reads as follows "Number 92. June 5th, 1903. W. W. Stewart, for option on A. W. Ball tract, \$400.00."

Mr. E. H. Thomas says he will produce the check book at the hearing.

Mr. Merillat moves to strike out the foregoing testimony.

In the same check book appears the stub of the check for 201 the \$206 including the \$100 return of option to Stewart advanced; the stub of check 106 reads as follows: "July 16th, 1903, Due W. W. Stewart, in full for advance on Ball tract, advance for leasing and rent of office, in all \$206.74.

Mr. E. H. Thomas will produce this book at the hearing.

Mr. Merillat objects to all the foregoing testimony.

These checks made by the Maryland Oil and Development Co. which have been produced and these entries on the stub of this check book corresponding to those checks were made in the regular course of business and on the dates mentioned. I was present when the checks were made; I should have said made and delivered.

The company was desirous to lease lands near the well and places adjoining there wherever practicable and authorized and instructed and paid the expenses of Dr. Stewart for acquiring leases of land. He began sometime prior to this transaction and continued for several weeks—probably two or three months off and on—in all leasing nearly fifteen thousand acres and between seventy and eighty different leases. The Ball tract of land lying adjacent to the company's land, where the oil well is, and adjoining the Osborne tract of land also owned by the company, was a tract of land it seemed for the best interests to be leased by the company. I had especially urged the company to lease it prior to this transaction

and urged Dr. Stewart, when he was going out to lease from 202 time to time, to be sure and get that lease. At one time I understood that Mr. Leapley had tried to lease it for the company under the Doctor's directions, and there was a question whether or not it could be leased and I suggested, and it was talked over by members of the company, that if we could not lease it we better get an option on it at the best terms that we could make and we instructed and desired Dr. Stewart to do that. Dr. Stewart had some interview with Mr. Leapley, but I was not present.

I might say that on the day in question and in my presence and at a meeting of the company, Dr. Stewart reported that by a payment of \$500 down to Dr. Griffith as agent for the Ball brothers, we could get an option on the land, and to carry out that understanding his check was given and I went down to Dr. Griffith's with him to execute that understanding.

Mr. Merillat moved to strike out as hearsay, irrelevant, immaterial & incompetent & it was agreed all the line of testimony should be considered as objected to.

There was an executive committee of the Board of Directors, having the same power as the Board of Directors; that is the power to carry out the business of the company.

This book is the Maryland Oil and Development Co. minutes kept by the Secretary. On page 93 the following minutes appear, being a part of the proceedings of the tenth meeting of the Board of Directors, under date of January 19th, 1903, at 3:30 P. M.—viz:—

"Upon motion duly made and seconded it was voted, that for the management of the affairs of this company, at home and 202½ abroad, and in such manner as they think, and to do all such acts and things as may or can be exercised by the Board of Directors, including all rights, powers and duties of said Board of Directors, regarding the land and property of this corporation, the power to develop, mine and drill for oil, gas and all minerals in said lands, and to make contracts regarding the same, and to lease let and rent all said lands, or the right to develop, mine and drill in the same, the said Board hereby delegates, lodges and transfers exclusively, all their said powers, rights and duties now vested in said Board to an Executive Committee of three members of said Board: to wit, to W. W. Stewart, President of said Board, who shall be Chairman of said Committee, and to Rene C. Baughman and Frederick Briggs, for the period of ninety days from date unless sooner revoked by a majority of said Board, to be by said Committee made and exercised as aforesaid; and this resolution shall take effect immediately upon its passage. The meeting thereupon adjourned." (That is only a part of it.)

Signed.

A. W. THOMAS, *Secretary*.

The minutes actually show (Mr. Merillat objected to this question) also under date of April 20 1903 page 101 "Upon motion duly made and seconded it was by the board voted that the Board of Directors hereby continues and reappoints the Executive Committee of said Board (consisting of W. W. Stewart, President, Rene C. Baughman and Frederick Briggs directors) as constituted and empowered in resolutions adopted by the Board of Directors of 203 January 19th, 1903, delegating, lodging and transferring, hereby in the manner and for the same purpose as heretofore existing under said resolutions of January 19th, 1903, all the rights, powers and duties, as therein set forth, the same to be vested in, held and exercised by said Executive Committee in the same manner, and for the same purposes, as heretofore provided by said resolution of January 19th, 1903, until the first day of July, 1903; unless sooner revoked by a majority vote of the board; and this resolution shall take effect immediately upon its passage. The meeting thereupon adjourned. A. W. Thomas, Secretary."

Mr. E. H. Thomas offers book for the inspection of counsel and says he will produce it at the hearing.

On page 107, being part of the minutes of the annual meeting of

the stockholders of the company held on July 14th, 1903, a resolution was passed after the report of President Stewart had been made and of the Treasurer of what had been done during the past year by the officers of the company, a resolution was passed thanking him for his disinterested and capable work, and as a part of that report, submitted by Dr. Stewart under the head of liabilities is this item on page 120, this being made prior to the payment of the \$206.00 as shown by the check here. This item was made in that report of the president. "Due W. W. Stewart for advances of cash to the company in securing leases, on option of 240 acre tract, and for rent of offices, in all \$206.74."

Motion to strike out by Mr. Merillat.

On page 70 of the same book under the head of By-Laws 204 is given under the sub-head of "Powers of Directors. Number Seven, the following: "The Board of Directors shall have the management of the business of the company, and in addition to the powers and authorities by these By-laws expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or *come* by the corporation." That is under the head of Powers of the Board of Directors. Further on that subject on page 21 the following authority has been given: "From time to time to provide for the management of the affairs of the company, at home or abroad, in such manner as they think fit, and in particular, authority to delegate any of the powers of the Board of Directors to any committee, officer or agent, and to appoint persons to be the agent- of the company with such powers (including the power to sub-delegate) and upon such terms as may be thought fit."

The \$500 as option for the Ball contract by the Oil Company, since the return of the \$100 advanced by Dr. Stewart, was the company's money. That is the money that Dr. Griffith took and we have not seen it since.

Objected to by Mr. Merillat on previous grounds.

By Mr. E. H. THOMAS: In response to the previous call for the check given for the payment of taxes on the property called the Ball tract I produce check dated September 10th, 1903, number 520, drawn by W. W. Stewart to the order of L. A. Griffith for \$8.26, paid September 30th, 1903. Wants same copied in record and returned to Dr. Stewart.

Said check is in words and figures following, to wit:

205 WASHINGTON, D. C., September 10th, 1903 No. 520.

The Columbia National Bank of Washington

Pay to the order of Dr. L. A. Griffith \$8.26 eight 26/100 dollars.  
W. W. STEWART.

Stamped across front: Paid Sept. 30th, 1903.

Printed on left end of face: W. W. Stewart, Stewart Building,  
Cor. 6th and D Sts., N. W.

Endorsed: L. A. Griffith.

Bank stamps: Pay to the order of The First National Bank of Southern Maryland, R. N. Ryon, Treasurer.

Pay to any bank, Banker, Bankers or Trust Company, or order, Previous endorsements guaranteed, First Nat. Bank of Southern Md. Upper Marlboro, Md., W. S. Hill, Cashier.

Pay to the order of any Bank or Banker, Sept. 29th, 1903, Farmer's & Merchants Nat'l Bank, Baltimore, Md., Carter G. Osborn, Cashier.

Citizen's National Bank of Washington City, Sept. 30, 1903.

That money, \$8.26, represented by this check, was returned to Dr. Stewart by check of the oil company. The stub shows in the check book number 136 on the date of September 10th, 1903, Dr. W. W. Stewart, one-half of taxes on Ball property \$8.26.

Mr. Merillat moved to strike out.

This check which you have just handed me, dated September 10th, being the check referred to in this stub, is the check of the oil company signed by Fred Briggs, treasurer, bearing date September 10th.

Mr. Thomas wants check copied and says he will produce it at the hearing.

Said check is in words and figures following, to wit:

WASHINGTON, D. C., *Sept. 10th, 1903.* No. 136.

The Central National Bank of Washington

Pay to the order of Dr. W. W. Stewart \$8.26 eight 26/100 dollars.

MD. OIL & DEVELOPMENT CO.

A. F. LUCAS, *President.*

FRED BRIGGS, *Treasurer.*

Stamped on face: Sept. 12, 1903.

Printed on left end corner: Maryland Oil and Development Company.

Endorsed: W. W. Stewart.

Stamped: Columbia National Bank of Washington, Sept. 12, 1903, Washington, D. C.

Perforation: Paid.

I know L. A. Griffith, the complainant in this case. I first saw him to speak to him one day, I think it was in December, 1902, down at the blacksmith's shop in Forrestville. He was with his horse and conveyance and I was going to Centerville and I asked him to give me a lift down to Centerville. I next met him one time several months afterwards in front of the Centerville store and I think some one called to me as I came out of the land—from the oil well to the store with my wheel up to the carriage where Dr. Griffith sat and introduced me as Mr. Thomas, the Secretary of the Maryland Oil and Development Company, and I said to him that we had met before and he passed the time of day.

In December, 1902, when I had that talk with him, he carried me from that place, the blacksmith shop, down to the store at Center-ville, the entrance to the oil company's property, about a mile and a half I guess, and my conversation all the way down was in refer-ence to the oil well and the prospects and in that conversation I told him that Dr. Stewart was the president of the company.

On June 5th, 1903, just after this check for \$500 was drawn in the office of the company, I took the check and drove down to Marlboro and found Dr. Griffith in his office in Upper Marlboro.

Most certainly Dr. Stewart knew it was for the Maryland Oil and Development Co. that I went down there; an understanding was made that I was to go down there and carry it under the agreement that Dr. Stewart had made with Dr. Griffith.

Mr. Merillat moved to strike out and said the conversation & not witness- understanding was evidence. Asked by defendant's coun- sel what disclosure he made to Dr. Griffith respecting whom he rep- resented witness replied:

208 "When I went to Dr. Griffith's office at Upper Marlboro, I told him that I came down to carry out the agreement made by Stewart with him in reference to the Ball land and showed him the check for \$500 which is in evidence here. He said the Ball brothers did not own the land, that it was owned by Alfred Ball. I asked him if he was sure about that and he said yes he had looked it up. I said that that would not make any material differ- ence."

I told Dr. Griffith, I said that \$500 was to be paid down and that the balance of the first one-half to be paid for the 240 acres at forty dollars per acre, was to be paid by November 7th and the other half to be secured by mortgage, and he said that that was correct, and he said that there was to be one acre for a burial lot which was not to go with the tract and I told him that I understood that. He said it would be necessary to have a survey not only to set out the burial lot, but because there had been a small tract of two or three acres sold off, and I asked him about the making of the survey and he said that the expenses ought to be borne by the parties, half and half. Well after some talk I agreed to that and asked who should survey it. He said Mr. Latimer was a good man. I said that we had had Mr. Latimer to survey for us the Osborne tract and part of the Leapley lines and he said "no, sir" that this Mr. Latimer lived down there, I think he said somewhere. The Latimer I mentioned lived in Hyattsville. He said that he would get Mr. Latimer in there shortly and find out what it would cost. Afterwards Mr. Latimer did come in and he agreed to make the survey. I think it was some forty dollars, and I told him he would be notified when it was to be made. The understanding was that it was to be divided, 209 the expense of it, between the parties. Witness said that Dr. Stewart was not there when Latimer was there.

Stewart did not go down with me, I went alone. Stewart was in Washington. I asked about the title of the land and Dr. Griffith said the title was good. I said of course, we will need an abstract



and I asked him if one had been made and he said no. I said I did not want to undertake to go down to Marlboro and make an abstract, but I should, of course, pass upon the sufficiency of the title and he said that Mr. Roberts—Lawyer Roberts, whom I knew, “would be a good man.” I asked him what it would cost and he said that he thought he could get Joe to make an abstract and to make the deed for \$50 and that that expense ought to be divided between the parties. Well, after some demurring to that I agreed to it. Then he came at me for the taxes and said that half of the taxes for that year should be paid by the parties. I demurred to that at first. Finally I agreed that the taxes should be paid in that way. Then I had some further talk with him about the oil indications down there at this time and I said to him that it was all a gamble—that it was uncertain—we thought it was pretty good, but it may not turn out as we hoped. I then started to draw the contract. He furnished me with the paper and pen and I sat down at the table. He said he would go out and look up Mr. Latimer and Mr. Roberts and I might draw the contract. He went out and left me alone to draw the contract and before I had completed the contract Mr. Latimer came in and we made the arrangements of which I have spoken.

210 He went out and when I had completed the contract, which has been put in evidence, and which is in my own handwriting, by Dr. Griffith in this case, it was read over and Dr. Griffith spoke about the \$500. He has testified something about that, that I said he could be forced—Dr. Stewart could be forced to take it. There was no such conversation as that. I simply said that that meant that if the money was not paid on the 7th of November as the contract called for, the \$500 would be forfeited. Having drawn the contract we went out to look up Mr. Roberts and found Mr. Roberts and showed him the contract and he read it over and said that that was all right, said that it was satisfactory to him and suggested that we should make a duplicate of it and I told him that I would go back and write a duplicate of it and I went back and wrote a duplicate of that contract in my own handwriting. Whilst I was writing that and after it had been completed Mr. Roberts came in and we compared the two and Dr. Griffith signed and I signed it as shown on the contract and Mr. Roberts witnessed it. I should say that in the early part of the interview that I asked Dr. Griffith if he had a power of attorney and he said that he had, but he said he hadn't it there. He said, I think, that the Notary had it, but he said he would send that to me or a certified copy of it in the morning by mail and I took out my business card, one like this same thing (witness indicates by taking card out of his pocket) giving my name as A. W. Thomas, attorney and counselor at law, Washington, D. C., and called his attention to the fact, as shown on the card, that I had now offices in suite numbers 101 and 102 of the Stewart Building, being Secretary of the Maryland Oil and Development Com-  
211 pany, that being their offices and not with Mr. R. P. Evans in the Stewart Building where I was formerly, and left him the card. That was the fore part of the interview. When Mr. Roberts came in the contract was executed, which I had drawn, and

Mr. Roberts suggested that it would be better if he (Roberts) should make a typewritten copy of the contract in duplicate for Dr. Griffith to sign and bring it up to Washington and have it executed by Dr. Stewart. I agreed to that and then it was arranged that Mr. Roberts should bring with it the power of attorney which Dr. Griffith had said he would send to me by mail. Mr. Roberts in his testimony stated that he was to draw the contract along the lines which I had drawn in the contract which is in evidence written out by me. The understanding was that he should typewrite it and in point of fact he did typewrite it and he made no changes whatever. The check was turned over to Dr. Griffith and I came back."

Q. What did you ask Griffith if anything about letting people know anything in reference to what sort of arrangement was made? A. As I went out of the door and went to the gate—I got to the gate I said, "Dr. Griffith, if people talk about this I wish you would make them believe that this is a lease, if you can, because if it is known that the company buys any lands they won't lease any more and so we will have to buy all instead of leases."

Q. What company. Was that after you had delivered or given your card to him? A. I said the company, of course I meant  
212 the oil company. This was just as I was going and was just about to get in the carriage, and he said "all right."

Dr. Griffith neither gave me or showed me neither the original or a copy of Exhibit A-1, which is the power of attorney, nor any power of attorney on that day down there. He did not show me any power of attorney. He is mistaken about that. He said that he had one, but I think that he said that the notary had it, but he would send it up or a copy of it the next day.

WASHINGTON, D. C., *October 8th, 1904,*  
Saturday, at 9:30 o'clock a. m.

Mr. A. W. THOMAS (continued).

By Mr. E. H. THOMAS:

In reference to the option on this 240 acre tract, as a questioned by you (Objected to by Mr. Merillat) I say, that in my testimony of yesterday regarding the minutes of the oil company in this book here, the same book I had yesterday, I omitted to give a part of the report made by Dr. Stewart to the annual meeting of the stockholders on July 14th, 1903. This report was from page 112 to page 119 and on page 117 was entered the following which was read there that day as part of the report. In addition to the leasing of the 14,387 acres mentioned, the company has purchased by deposit of \$500, as option, 240 acres of land next adjoining the 1000 acre tract, and  
213 which is thought to be extremely important for this company to control. The owner of this land would not lease the same on any terms, which occasioned the purchase thereof; the further sum of \$9500.00 is to be paid on November 7th, 1903, or deposit to be forfeited." That is the entry. I was present at these meetings of the minutes which I have read in my testimony, and in

fact read the minute expressly to Dr. Stewart—I was present at the meetings of all the minutes which I have read in my testimony. And those things certainly did actually occur which I have read, at the meetings which I attended.

At the meeting of the stockholders there were some—I think between thirty and forty. About two-thirds or more of all the stockholders of the company were present. The meetings of the Board of Directors was limited to the members of the Board of Directors and myself as Secretary and the meetings of the executive committee of the Board of Directors, having the same powers as the Board of Directors, consisted of the three members of the Executive Committee and myself as Secretary. Of course, some of the members of the Board of Directors would not be present. There would be one or more absent.

Q. Why was it the contract was made in the name of the defendant Stewart instead of in that of the Maryland Oil and Development Company? A. It had been talked over by myself and the members of the Executive Committee, the fact that the people down there were willing to sell, but very generally reluctant to lease, and if it should appear or was known that the oil company had entered into a contract for the purchase of land like the Ball tract on the payment of such a large sum of money that the people down there would not give us leases and would want us to pay large sums of money on purchases or contracts to purchase. I had talked this matter over with Dr. Stewart on the day I went there with the check. This arrangement was made for that purpose.

Mr. Merillat moved to strike out.

That was the talk with the Executive Committee and myself and I had talked this matter over with Dr. Stewart and with all of them at different times and on the day when I went down there with the check this arrangement was made for that purpose.

Q. Did you try to convey to Dr. Griffith that the option was only good as to him and not as to Dr. Stewart? A. Nothing of the kind.

Mr. Merillat objects.

After I had shaped up the contract and Dr. Griffith read down to that part of it which provided for the forfeiture of the \$500, I stated to him that if the money was not paid as the contract called for on November 7th, the \$500 would be forfeited and I said that the whole matter was a gamble.

Mr. MERILLAT. Objection renewed.

On the next day, being the 6th of June and Saturday, Mr. Joseph Roberts came to the office of the Maryland Oil and Development Company, where I was and brought with him typewritten copies of the contract which I had drawn on the day before at Dr. Griffith's office. This contract was in duplicate and his copies were in duplicate and they were executed on the part of Dr. Griffith bearing date the 5th day of June and to the contract had been added, I think, an acknowledgment before a notary by Dr. Griffith. In every respect they were the same as those which I

drew in writing down there. Dr. Stewart being upstairs in his office, dental office, I went upstairs for him to come down. He said he would be down in a few moments, and prior to his coming down Mr. Roberts and I compared the copies which he had made with the duplicate writing contract which I had made. Mr. Roberts showed me the power of attorney and I read it over. It was the power of attorney which is now on file in the Orphans' Court as part of the petition filed by Dr. Griffith on November 17th, a copy of which has been put in evidence here. I said to Mr. Roberts, "I now understand why Dr. Griffith did not show me the power of attorney yesterday. This power of attorney shows that he is to get a commission of \$5.00 an acre in this matter." Mr. Roberts laughed. Well, I said, "business is business." Mr. Roberts said, "I understand that the oil company is the real purchaser in this matter." I said "yes, they furnished the money, the \$500." He said, "I suppose they will pay one-half of my fee." I said, "certainly, but we don't want anything said about that." He said "all right." Dr. Stewart came in then hurriedly and asked me if there was a power of attorney and I said yes. The power of attorney was not shown to Dr. Stewart. I told Dr. Stewart there was a power of attorney and I don't think he stopped to read the contract. I told him it had been compared and it was the same. He was in a great hurry. He said to Mr. Roberts that this was a matter of the oil company and it was their  
216 money, and I said again that we did not want anything said about that and Mr. Roberts said "all right." Dr. Stewart signed it and I witnessed it. This conversation which occurred in this office on that day seemed to have been forgotten by Mr. Roberts in his testimony. He makes no mention of it whatever.

I spoke of Mr. Roberts asking for his fee, whether the Maryland Oil and Development Co. was to pay one-half of it, but he did not present any bill at that time. He did later. I will come to that.

Mr. Merillat objected that Roberts was attorney of both parties.

The other interview of which Mr. Roberts spoke which he said took place in the oil company's office with Dr. Stewart and myself shortly after Mr. Ball's death took place substantially as he gave his testimony in this examination. On June 15th, I received this communication, it bearing date of Upper Marlboro, June 15th 1903. The envelope was addressed to A. W. Thomas, Stewart Building, Washington, D. C., Maryland Oil and Development Company, and in left hand corner was stamped, J. K. Roberts, attorney.

It is marked "*In re Alfred Ball Option*"; I put that on there the day I received that letter and filed it with the papers.

Mr. Merillat objects to it as self serving.

Mr. E. H. Thomas offers envelope in evidence on behalf of defendant and asks that it be marked exhibit A. W. T. No. 1.

217 Mr. Merillat again objects.

In the envelope I received this communication: This bears the letter head of "Law offices of Stanley and Roberts, Upper Marlboro, Maryland, June 13th, 1903. Charles W. Stanley and Joseph K.

Roberts. Mr. A. W. Thomas, Esq. My dear sir: I have finished up the Alfred W. Ball title, and enclose it to you herewith. I have also given Dr. Griffith a copy of the same. The next thing in order I presume will be the survey of the land by Mr. W. J. Latimer. I found the title to be all right in Mr. Ball. I enclose Bill as per agreement for one half of the costs the other to be paid by Dr. L. A. Griffith agent of Mr. Ball. I will have the deed prepared and given you just as soon as the description from the survey is given me. Very truly yours, J. K. Roberts."

I am familiar with Mr. Roberts' signature, and I should say that that is his signature.

Mr. E. H. Thomas offers letter in evidence as defendant's exhibit A. W. T. No. 2.

Mr. Merillat objects.

Besides this letter, there was in that envelope, this paper here which is also on a letter head of the law offices of Stanley and Roberts.

"UPPER MARLBORO, MD., June 13, 1903.

The Maryland Oil and Development Company, a Corporation, to Joseph K. Roberts, Attorney, Dr.

To one-half of the fees as agreed upon between the corporation and Dr. L. A. Griffith, agent of Mr.

218 Alfred W. Ball for professional services in the matter of the title and conveyance of the 240 acres more or less of a tract of land called "The Child's Portion" and "Crotch Hall" near Meadows (Centerville) Prince George's County, Maryland, the other 1/2 one-half to be paid by Dr. Griffith, agent of Mr. Alfred W. Ball..... \$25.00."

Mr. E. H. Thomas offers the bill in evidence as defendant's exhibit A. W. T. No. 3.

With that communication in that envelope was enclosed the abstract of title. That had on the back the caption as follows:

"Caption. An abstract of the title of Alfred W. Ball of Meadows, Prince George's County, Maryland, in and to a tract of land in said county called and known as "Child's Portion," and also a tract of land in said county known as "Crotch Hall" and "Addition to Crotch Hall," all supposed to contain about 239 acres of land." Then followed the various items of what the record showed as to the title. It bore the date of June 11th and this was the conclusion of the matter. "Title good in Alfred W. Ball at this date, June 11th, 1903. J. K. Roberts, Attorney."

I may state that that abstract then sent me remained in my office for examination by me as to the sufficiency of the title until I think December 21st, when I sent it with a letter, or took it rather personally, to Mr. Ambrose. In this connection I probably had better state to preserve the connection that on the 17th day of December, 1903, I sent a letter to Mr. Ambrose, the carbon copy of which I

219 have here and the original of which has been put in evidence, regarding the abstract.

Hereupon letter was called for but witness says it has been put in evidence. Witness was shown a copy of the contract dated 5th of June with the power of attorney attached and said:

I have no recollection of seeing this paper here, this short power of attorney.

This paper which you now hand me, being contract dated the 5th day of June, is the paper which Mr. Roberts brought up to the office of the Maryland Oil and Development Co. on June 6th, and Dr. Stewart signed it and I witnessed it.

On the back of this paper is the so called power of attorney; to the best of my recollection I never saw this paper here until it was shown to me shortly before this case came on for trial, for hearing. It was after this suit was brought and either at the time—think just prior to the time of the taking of testimony. The paper attached to the back of the contract is identified by the initials of the Examiner, and was shown to the witness Ridgely, but I have no recollection of ever seeing it.

Mr. E. H. Thomas offers the papers in evidence and states that these are the papers recorded by the Clerk of Upper Marlboro for which the check of the Maryland Oil and Development Company for \$1.25 was given and which is dated June 29th, this check having been heretofore offered in evidence.

Said papers are now marked defendant's exhibit A. W. T. No. 4, the said papers having been heretofore marked for identification "E. L. W."

220 On the 23rd day of November, 1903, sometime after the interview with myself and Dr. Stewart which Mr. Roberts testifies he had shortly after Mr. Ball's death—sometime after, I sent a letter, of which this is a copy, to Mr. Roberts, mailed it to him.

"SUITE 101-102, STEWART BLDG.,  
WASHINGTON, D. C., November 23rd, 1903.

J. K. Roberts, Esq., attorney at law, Upper Marlboro, Maryland.

DEAR SIR: Since you were here the other day I have had placed in my hands a copy of the Order of the Orphans' Court of the 17th inst. made in the Estate of Alfred W. Ball, deceased, concerning the land agreement. I have also examined the Will of Mr. Ball and the record of the proceedings had in said court in reference to the estate.

It does not appear to me from such examination and upon consideration of the agreement in question, and of the powers conferred upon such Court under the Statutes and decisions of your State, that jurisdiction lies in the Court to make the order referred to; nor that title can be fully vested in the purchaser under the agreement, or, indeed, under the terms of the Will itself, by means of such Order.

The death of Mr. Ball has produced complications which I believe, upon further consideration you will agree with me necessitates  
221 the taking of steps, other than those contemplated in the Order, to furnish the perfect and unquestioned title desired by the purchaser.



It would seem to me that the Agreement should stand pending the completion of perfect title. I have so advised the *Maryland Oil and Development Company*, the real party to the agreement—Doctor Stewart being the nominal party merely.

Very truly yours,

A. W. THOMAS,

*Att'y for Maryland Oil and Development Company."*

Mr. Merillat objects to the letter as a self serving declaration and incompetent as affecting the contract made.

During this correspondence with Roberts and this talk with Roberts about the title to the Ball tract, I was acting for the Maryland Oil and Development Company as their Secretary.

Mr. Merillat objected complainant was not affected by witness' secret employment.

I was not employed by Dr. Stewart to attend to this matter during any of the period of this time; I was employed by the Maryland Oil and Development Company.

I saw Mr. Roberts on June 6th, the day after the contract was made at Upper Marlboro, in the office of the Maryland Oil and Development Company and I saw him sometime after the death of Alfred W. Ball in the same office in company with Dr. Stewart and had the conversation which he has testified to and which was substantially as he has testified to it.

That was some few days after the death of Mr. Ball. I saw him on June 6th in the office of the Maryland Oil and Development Company and at the time I have given the details of this conversation. I think I saw him one time down in Upper Marlboro.

I only saw Roberts here in Washington on this business those two times, that is the 6th of June, 1903, and a few days after the death of Mr. Ball.

I saw Dr. Griffith in Washington on December 8th, Dr. Griffith and Mr. Ambrose and Dr. Stewart came into the office of the oil company, 307 Stewart Building. I was introduced to Mr. Ambrose as the attorney for Dr. Griffith in the Ball matter. I was given this paper here, which is a certified copy of the order of the Orphans' Court of December 17th, I mean November 17th, which I think has been put in evidence, a copy of it. And also what purported to be a deed from Dr. Griffith or Dr. Griffith as executor, to W. W. Stewart to all of the Ball tract of land.

I said, of course, I cannot pass upon the sufficiency of this deed right here in five minutes. I think Mr. Ambrose said certainly not and the deed was, I think, taken out—the paper was taken out of my hands by Mr. Ambrose. That is I had it there and it was passed back to Mr. Ambrose. I did not examine it a great deal, the deed. Dr. Stewart stated that it was the oil company's matter, and Mr. Ambrose said he did not care. I told him it was certainly the oil company's matter and the money was furnished by the oil company and that I represented the oil company. Dr. Stewart said that I did not represent him and it was entirely the oil company's matter.

Well, later on I said in the conversation that Mr. Roberts' bill would be paid by the company when the title had been shown to be good and sufficient. The payment of one-half of the bill for the survey was included in my statement that the expenses would be paid by the oil company.

Mr. Merillat moves to strike out.

There was no survey or anything of the kind handed to me; the only paper handed to me was what purported to be a deed and this paper—the order of the Orphans' Court of November 17th. It was stated by Dr. Griffith that there was 284 acres or 288 acres of land instead of 240.

I did not hear Dr. Stewart state, as Mr. Ambrose testifies, that he would carry out the contract; that he wanted the land, or had arranged to buy it or anything of that kind, or that he wished Mr. Roberts to continue the work, or that he was satisfied with the work done by Mr. Roberts;—I heard no conversation of that character. I was there during all of the conversation that occurred in the office there which took about perhaps ten minutes.

It was a small office and such a conversation could not have occurred without my hearing it. The conversation was mostly carried on between myself and Mr. Ambrose.

Concerning the abstract, regarding the sufficiency of the title up to the time of Ball's death I said that the abstract which had been furnished only ran down to June 11th, and, of course, did not show anything which had taken place since that time which might  
224 affect the title to that property and I said that that part shown me was not sufficient; that there were several reasons why that was not sufficient to give a good title as it was shown, and Mr. Ambrose asked me if I would state what they were and I said it was impossible to state that at that time and he said "Can you do that at some other day—can you go over it with me?" And I said "yes sir." We had some talk as to when I would do that and I told him I could not for a day or two, but said I would come and see him and fix some day. A few days after that he came in and asked me if I was ready to state my objections and told him that I hadn't had time to look that up and he said, "How would next Friday do?" I think it was next Friday, and I said, "all right" and on that Friday I wrote to Mr. Ambrose. That is the letter of December 17th giving the objections to the abstract.

I took the abstract over on December 21st, and I also left this copy of this note which has been put in evidence—short note.

Dr. Griffith is entirely mistaken in his statement that when I drew the contracts in Dr. Griffith's office on the 5th of June, 1903, Dr. Griffith drew a receipt or gave me a receipt for \$500. He gave me no receipt whatever. He drew no receipt whatever. The only receipt was embodied in the duplicate contract which I drew.

At page 32 of the testimony of Dr. Griffith where he testified that when I gave him the check I had a conversation with him about it, I think I said that it is his certified check and it is all right or

something of that nature. At page 44 where Dr. Griffith testified "When you were drawing up that contract the question was mentioned and a clause was put in there and I told him then and he agreed that this was a sale and that there was no option about it and he said that this was put in there for my protection and for no other purpose." I had no conversation such as that. I had no such conversation with Stewart between 7th and 15th of November at which I was present as Dr. Griffith testified nor had I a conversation with Dr. Griffith and Dr. Stewart. The only conversation I had was on December 8th. Referring to this conversation Dr. Griffith states at page 49 "He said (that is Stewart) in the presence of his lawyer Mr. Thomas—Mr. A. W. Thomas, to whom he handed the papers in this case who was standing there, that he was ready to comply with the terms when a valid title was given, but that he did not consider the title then complete. Mr. Ambrose asked him the question in my presence: 'Then you will accept these papers and comply with the terms of the contract when the title is satisfactory and complete?' And he said 'yes, yes sir.'" I do not know anything about any conversation that occurred at that or any other time.

On page 49 Dr. Griffith further testifies "The question was mentioned by Mr. Ambrose after Dr. Stewart had agreed to accept the title of the property if it was properly certified to by Mr. Joseph K. Roberts. Mr. Stewart then stated and Mr. Thomas thought there was a link missing between the time—at least, the time of the completion of this abstract or the title given there and the present date and that they agreed to make good. Mr. A. W. Thomas, acting in the presence of Mr. Stewart and for Mr. Stewart, sent me and I passed over to Mr. Roberts just what he desired done to complete that title." That is not true. The Doctor is entirely mistaken about that.

I did not at that time or any other time give Dr. Griffith a memorandum as to the imperfections of the title, nor I never gave him anything except the original written contract which was made out in his office.

In reference to Dr. Griffith's testimony on page 20 to the effect that I told him that I represented Dr. W. W. Stewart in the purchase of this property, I say that all I said to Dr. Griffith was that I came down there to carry out the arrangement made between him and Dr. Stewart in regard to the property.

Dr. Griffith testifies at page 21 respecting the forfeiture clause in the contract that he said to me, "'What do you mean by this in here—five hundred dollars if not paid,' and I told him that the clause was a protection to him." I did not say that this clause was a protection to him. He said—I mean that if the money was not paid on November 7th, the \$500 would be forfeited. That is what I said in reply to his question asking me what I meant by the \$500 and I replied that I meant what I said. He asked me what I meant. I said I meant that if the money was not paid on November 7th the \$500 would be forfeited. In reply to his inquiry that is what I said. He asked for my meaning after the contract was drawn.

Dr. Griffith (page 25) testifies that he saw me once going down on the road prior to this Stewart deal, and did not know me personally and knew nothing about me until I came and represented and produced this check of Stewart. I say that in my testimony already I stated that he carried me down from the blacksmith shop at Forrestville to the entrance of the oil land at Centerville. I did not tell him on that occasion who I was.

Several weeks or a month or two after the time when he carried me down in the buggy, I was introduced to him at the Centerville store as Mr. A. W. Thomas, Secretary of the Maryland Oil and Development Co. and I said to him, "Doctor, we have met before." And we passed the time of the day and went on. That must have been several months before I went down there with Stewart's check. Probably two or three months. I can state further as to my acquaintance with Dr. Griffith. Perhaps it would be well to mention the matter.

In 1901 Mr. Fred Briggs purchased in his (Briggs) name, which money Mr. R. P. Evans and I furnished, 27 acres of land which lie diagonally across the road from the Ball tract, between the three roads, bounded on three sides by a road. I corresponded with Dr. Griffith in reference to that purchase and received a reply from him regarding the purchase and regarding the payment of interest on the mortgage, and the reason I did not make myself known to him when I went down to the oil well in his buggy or in his conveyance was that there was some interest due at that time and I did not know but what the Doctor would ask me for it so I did not say who I was.

Mr. Merillat moves to strike out.

228 In reference to Mr. Roberts' statement that he never knew that Dr. Stewart represented the oil company; that nothing was ever said about any oil company; and never heard of that, I reply that prior to the interview here in Washington in November after the death of Ball, Mr. Roberts sent his letter with a bill against the oil company for this very matter, and he had been told both by Dr. Stewart and myself that it was the oil company's matter.

When Mr. Ambrose came in the office of the oil company with Dr. Griffith subsequent to November 23rd, 1903, December 8th is the day, he did not to my knowledge take Dr. Stewart out in the hall as some gentlemen came in and have a private discussion. They were in there together. We were talking about ten minutes and were interrupted by the entrance of Mr. Fred Briggs and Mr. Baughman, and I think Capt. Lucas, who were to hold a meeting that day and Dr. Griffith and Mr. Ambrose went away leaving Dr. Stewart in the office to my best recollection. I never heard, prior to Mr. Ambrose's testimony, that there had been any private conversation between Stewart and Ambrose out in the hall.

Mr. Ambrose testified (page 94) respecting this interview "After conversation along other lines, which will be detailed hereafter, Dr. Griffith together with Dr. Stewart and myself went out in the hallway and there it was agreed that Mr. Roberts should continue the title work." I have no knowledge of that. As I said, Dr. Griffith

and Mr. Ambrose went away. These other parties coming in the office was full and they went out and Dr. Stewart to my best recollection remained there and we had a meeting right then and  
229 there. I have got the meeting here in the book—the Maryland Oil and Development Co. book.

I find I am incorrect. I sent out the notices on that day, December 8th for a meeting. That is page 131. After consultation with Capt. Lucas and Mr. Briggs and Mr. Baughman I sent out this notice on that day. Dr. Stewart was there at the time.

Dr. Stewart did not say that he desired Mr. Roberts to continue the work that he had done and that it was satisfactory, the abstract as prepared by Mr. Roberts, and that he would desire such points as were raised by his attorney to be cured; that Mr. Roberts should proceed to cure them if the defects were such as necessitated action—Dr. Stewart said nothing of the kind.

Dr. Stewart certainly did not state emphatically or otherwise that he had no other end in view than the perfecting of this title and the taking to himself of this land. Dr. Stewart did not state that he wanted the land; that he had arranged to buy it and would be disappointed if anything happened by which he would fail to get it. I cannot recollect anything of that kind. I am positive that he did not. The question turned really to me as to what would be done in this matter, and the answer which I made to that question and to other questions of the same kind was that they must show a good clear title before any steps could be taken and until that time the contract would stand. A good clear title must be shown, which they could not do at that time.

At first they claimed that they had a good clear title, but  
230 after some talk it seemed that Mr. Ambrose saw the necessity of running that abstract down, but he could not agree with me as to the powers and jurisdiction of the Orphans' Court. I insisted that there was no jurisdiction and that there was no title there and until title was given we were not called upon—the company was not called upon to complete it. But I said on that occasion, as I have already testified, that we would pay one-half of Roberts' fee and the survey fee when the title was made good. Dr. Stewart did not say that the delay occasioned by the death of Mr. Ball and by such defects as his attorney considered existed would not in any wise be taken advantage of by him.

I did not state to Mr. Ambrose in his office a week or ten days after this interview between Griffith and Stewart and I in the Maryland Oil and Development Company's office, that as soon as Mr. Roberts satisfied me that the title to the land was good Dr. Stewart would complete the purchase. Mr. Ambrose is mistaken in regard to that.

Yes sir, as I have testified incidentally, I was individually interested before the formation of the Maryland Oil and Development Company with Mr. Briggs in the purchase of an adjoining tract of land. That is a tract which was owned by Dr. Griffith of twenty-seven acres bounded on the east side by the road which runs from near the Ball property up to Forrestville; on the south side by the

road which runs from the Ball property to Red's corner, I think they called it, and on the west side by the road which runs from the Ball property up to the new cut road to Washington, which is the shortest road to Washington—twenty-seven acres. It is sandy and swampy land. Some timber on it. We were to pay \$500 for the 27 acres. The bargain was made in 1901.

It has more timber land than the Ball land, which is salable, than Ball's land. The quality of the land is about the same as most of Ball's land.

I was interested in other land bought there. I had a little tract of land of three acres down just west of the oil company's land. That was bought about the same time that I bought these 27 acres. I think the price was 27-20-25 dollars an acre or something like that. The Maryland Oil and Development Co. did not buy from any original owner any land there. The Maryland Oil and Development Co. on its formation in July, 1902, purchased from the Maryland Oil and Development Syndicate the seven tracts of land which made up the 1000 acres of land which has been testified to. This 1000 acres of land was made up of seven different farms purchased by Mr. Briggs and Mr. Lendner and turned over to the Maryland Oil and Development Syndicate and they transferred that land to the Maryland Oil and Development Co., and the Maryland Oil and Development Co. have never bought or made any contracts for land other than the Ball tract.

WASHINGTON, D. C., *October 10th, 1904,*  
Monday, at 3:30 p. m.

Mr. A. W. THOMAS: Before proceeding with the cross examination I wish to make a statement. In my testimony at the last session, page 108, speaking of the time when I took the abstract over to Mr. Ambrose's office on the 21st of December, I said, "Yes sir, and that I had also left this copy of this note, which has been put in evidence—short note." Right there I was interrupted. The note which I put in the same envelope containing the abstract and handed to Mr. Ambrose was as follows:

"SUITE 307, STEWART BUILDING,  
WASHINGTON, D. C., *December 21, 1903.*

William E. Ambrose, Esq., attorney at law, 456 Louisiana avenue, city.

DEAR SIR: Enclosed please find the abstract in the Ball matter. When you have examined the same with reference to my memorandum of 17th instant, if you will call at your convenience we can confer about it.

Very truly yours,

A. W. THOMAS."

That note was handed in the envelope with the abstract at that time.



## Cross-examination.

By Mr. MERILLAT:

The lands first acquired in connection with the oil matter either by the company or the syndicate, were acquired by Mr. Lendner and Mr. Fred Briggs in the summer, I think, and Fall of 1901, and the syndicate was formed along that winter or early in the spring of 1902.

The Ball land is on the North-west side of the 1000 acre tract that was acquired at that time. It adjoins it, and is made up of seven farms. It adjoins the tract of land known as the Osborne tract which we bought.

I would not be able to give in detail what land we have under lease adjoining the tract where the well is on, this 1000 acre tract. I think there are several tracts under lease that immediately adjoin it. I could not say. Dr. Stewart has the details. The thousand acres was acquired in the name of individuals and then turned over to the syndicate, and by the syndicate turned over to the oil company. The boring, I think, began in April, 1902. That is, the preparations for boring. The boring began shortly after that time.

The Pumphrey tract was one of the seven tracts first acquired. All these tracts were purchased by Lendner and Briggs and turned over to the syndicate before any boring began.

You ask whether there was oil excitement at the time of the acquisition of this land by Lendner and Briggs, openly, and I say that Lendner and Briggs and the parties interested were trying to get the land. There was no oil excitement when they bought.

I could not say that we gave \$22.50 an acre for the Pumphrey Farm. Some of that land was got at \$12.00 an acre and some at \$20. I think it ranged in that way. No sir, I do not think the Pumphrey farm adjoins the Ball farm. The Osborne farm is between the Pumphrey and Ball land. They bored there over a year; they were boring in the month of June, 1903, and boring continued all that summer, with some intermissions, waiting for pipe, etc. until December following. We ceased to bore in December or early January. We got down to seventeen hundred feet, the second well.

I should judge that these wells are about a quarter of a mile from the nearest part of the Ball land, in a straight line—air line, but you could not get there in a straight line, for you would have to go through swamps and thickets and brush. It might be through—it would be at least a quarter of a mile. There was considerable excitement over the boring. I personally could not say what effect the boring for oil had on land values around that section, only what I heard. I am not aware of any sales ever having been made in that vicinity by any one after we commenced to bore there. Leases were made, but no sales. There were people ready to sell, but nobody wanted to buy. There was considerable excitement, of course, talk. Some believed in it and some did not. The farmers down there did not believe much in it. I guess, the owners of the land. The Ball

tract was the only land on which an option was obtained by the Maryland Oil and Development Co.

Q. Was there any other tract on which you claimed to have an option or the company? A. Not on the part of the company.

235 The reason we desired particularly to get this land and sought to impress it on those going there, was that it seemed to me particularly valuable because it adjoined this tract of land, and the waters that came down past there passed the well—came right out of that Ball swamp land. Then if we struck oil down there undoubtedly people would drill on the Ball tract. Undoubtedly it would be desirable to get. We had strong hopes along in the spring and early summer of 1903 that we would strike oil. Some days we were way up in the air, and other days were despondent. As a rule we were hopeful. It was desirable not to let it be known that the company was buying any land, because if it was known no one would lease us, but everybody would want to sell. We did not want to buy land. Leases answered every purpose and were very much less expensive. I understood that we would not be able to get the Ball land on a lease. That was what I understood when Mr. Leapley had been there and it was doubtful whether they would lease it at all or not. And the situation of the Ball land was such that if we did strike oil at all it was natural that people would acquire that land and bore there, and the land would be valuable, being right near to our land where we were drilling.

I do not think that its situation and elevation and topography were such as to suggest the Ball tract as a probable tract on which to bore. No more than other lands near there. Perhaps not so much, because this is a very low swampy and wet land and very hard to get into.

I have had occasion to go round the Ball tract and to go over it.

236 Once I went around it in running out the survey of lines of the Osborne tract which had been made by the Hyattsville Latimer. I went around it to see where the lines were afterwards in the fall after the leaves and thorns and brush had gotten brittle so you could break through and I made my way on the Ball tract and went pretty thoroughly over it. Before fall it was impossible to get on it and go over it on account of the briars and brambles. After a light frost you could get on it. In my judgment about half or two-thirds of it was sandy and swampy and marsh land with numerous streams running and winding every way and it was very difficult to traverse. The western part of it was sandy and uneven with timber which had been burned over by fire and made worthless. There seemed to be very little tillable land, that being in the neighborhood of the house. It is low, wet and in places sandy land. I should think of very little value for agricultural purposes, with very little timber of much value.

Q. When you went down there and saw Dr. Griffith about the purchase, how did he know that you were the proper person with whom to deal? His engagements were with Dr. Stewart. A. He knew me personally. He knew I was secretary of the Maryland Oil and Development Company and when I got there I showed him the check

and told him I came down there to carry out the arrangement made by Dr. Stewart with him in reference to the Ball land.

Q. Did you have a letter or anything of that sort from Dr. Stewart accrediting you as a proper person? A. I think I did take down a note of some kind from Dr. Stewart to Dr. Griffith stating  
237 that I came down there to complete that agreement.

Q. Did that note state for whom you came down there to complete that agreement? A. I could not give the exact wording of the note.

Q. Do you know whether or not the note—— A. It was a brief note.

Q. Do you know whether or not the note said that you were Dr. Stewart's attorney? A. I don't know whether it said that or not.

Q. Have you any recollection at all? A. Now, since you speak of it, I remember taking a brief note down there, the exact terms of it I could not state. It has been a good while ago. It may have said I was his attorney very likely.

Q. Did it make any mention of the Maryland Oil and Development Company whatever? A. I have no recollection of the exact terms of the note. I could not say as to that.

Q. Do you really recollect whether you had any note at all? A. Yes, sir, I do now.

Q. You cannot say as to whether or not it stated that you were Stewart's attorney instead of the Maryland Oil and Development Company's attorney? A. My recollection is that the note stated that Mr. Thomas, the bearer of this, had his check for five hundred dollars to complete the arrangements made, but that is not the exact language. It was that purport.

Q. Was it such as to apprise him that you were dealing for  
238 the Maryland Oil and Development Company? A. Well, now, I would not say positively, but it would apprise him about the note itself.

Q. What is your best recollection? A. I have stated about all that I can recollect as to the note.

Q. Now, you say that the company had given four hundred dollars to Dr. Stewart on account of this deal? A. Yes, sir.

Q. And that Dr. Stewart had loaned the company one hundred dollars? A. Yes, sir.

Q. If this was to be the company's deal why did not Dr. Stewart simply lend the company one hundred dollars and you give the company's check to Dr. Griffith for the amount? A. The check was drawn—that is, Dr. Stewart gave his check for five hundred dollars, but he was not putting up the whole five hundred dollars. He only put up one hundred dollars for the company's convenience.

Q. The company gave him its check for four hundred dollars and he gave his check for five hundred dollars? A. Yes, sir.

Q. Why in place of that didn't he simply advance the company one hundred dollars and put it with the other four hundred dollars that the company already had as a balance? Why if this was the company's deal didn't you turn over the check of the company to Dr. Griffith? A. I understand. The object was that the check

239 should not be the company's check. If it was the company's check, *im* going through the bank it would appear that the company was purchasing the land, and we did not wish that to be known.

Q. And it is true that you did not want Dr. Griffith to know it in order that he could not perhaps spread the news? A. He did know it I suppose.

Q. You suppose he did? A. Indeed I did.

Q. Didn't you as a matter of fact sign that contract A. W. Thomas, attorney for Stewart, instead of A. W. Thomas, attorney for the Maryland Oil and Development Company? A. I signed it A. W. Thomas. I do not know that the term attorney or agent was used.

Q. It was for Stewart and not for the oil company? A. Yes, sir, that was the way it was signed.

Q. Why did you sign that if as a matter of fact you were attorney for somebody else? A. I could not sign Dr. Stewart's name and neither could Dr. Griffith sign Mr. Ball's name. We signed in our relationship to the nominal parties to the deal.

Q. All of the papers then in any wise connected with the transaction were such as to imply that Dr. Stewart was a real purchaser, were they not? A. I think so on their face, but that paper was drawn with reference to the understanding had by Dr. Stewart and Dr. Griffith already existing.

240 Q. You have no knowledge of any such understanding personally? A. I have no direct knowledge.

Mr. THOMAS: What do you mean by that. You have some knowledge?

A. No direct knowledge.

Q. Have you any knowledge other than hearsay?

Mr. THOMAS: I object to that on the ground that it is a legal proposition put to the witness. If the witness heard from Dr. Stewart that such was the fact that would be evidence. You asked it of him and that would be competent evidence and not hearsay.

Mr. MERILLAT: I shall move to strike any such answer as that out.

Mr. THOMAS: You asked me what his knowledge is and he has got a right to tell you where he got it from and it is for the Court to say whether it is admissible after that or not.

WITNESS: I had repeatedly suggested to Dr. Stewart that he lease that land and when it was understood that it could not be leased to get an option, and further that that option be taken in his name so that it would not be known that the company was getting options, and that understanding was the reason for the check being drawn in that way and for the contract being drawn in that way.

Q. And it would tend, would it not, to the accomplishment of your purpose if Dr. Griffith did not know that Stewart was really representing the company? A. Why Dr. Griffith had been in communication with Dr. Stewart in carrying out my suggestions I sup-

posed, which would be that the title should be passed in that way.

241 Q. I would like to ask you whether or not you did not take a note down to Dr. Griffith at the time you went there saying that you appeared there as the attorney for Dr. Stewart?

A. I have answered that question to the best of my recollection as to what the note contained.

Q. Now, I would like you to make a direct answer to the direct question. A. It is possible that this note had those terms in it, but I am unable to say with any more positiveness than I have already testified.

Q. Now, if it was your purpose to prevent knowledge on the part of the community down there that the oil company was buying lands, why should you have apprised Dr. Griffith of the fact that the oil company was buying although you were taking title in the name of Stewart? A. I don't recollect that I have testified that I did say directly that I apprised Dr. Griffith that the oil company was buying that land.

Q. As I understand it you did not directly notify him that the oil company was the real purchaser? A. No, sir, I supposed that he and Dr. Stewart had all that arranged.

Q. And at that interview then there was not any definite knowledge conveyed to Dr. Griffith that it was the oil company's purchase and not that of Dr. Stewart?

Mr. THOMAS: I object to that as calling for a conclusion and an incorrect conclusion because the witness has already previously testified about that and he gave him his card showing that he

242 was the secretary of the oil company.

A. I have given with some degree of particularity the details of what occurred there, but I did not directly say that this was the oil company's purchase, but the whole trend of the conversation and deal there would bear out that belief, I think, in the mind of Dr. Griffith in connection with other affairs which I supposed he had with Dr. Stewart.

Q. You appeared there as an attorney, did you not? A. Yes, sir, for the oil company.

Q. Whom did you tell you were representing as attorney? A. I don't think I said that I represented anybody as attorney. I said to him that I came down there to carry out the understanding had between him and Dr. Stewart.

Q. I will again ask you whether or not the very letter accrediting you to Dr. Griffith did not say that you appeared there as the attorney for Dr. Stewart? A. I could not say anything more about that than I have already said. I cannot recollect the terms of the letter. I have given in detail my best recollection of it. It may be that it did have that in it.

Q. Your reference to yourself as the Secretary of the oil company you stated, I believe, occurred towards the end of your conversation?

A. No, sir, that occurred when I handed him the card in the earlier part of the conversation and the power of attorney—

Q. Was it before or after— A. And that before any  
243 contract was drawn, in the very beginning. Just after the  
check was shown and the statement made that Alfred Ball  
owned it rather than the Ball Brothers; after that came my question  
as to the power of attorney and in connection with that conversation  
I handed my card as I have testified.

Q. Where did your conversation occur? A. In Dr. Griffith's  
office.

Q. And Dr. Stewart had told you, had he not, that the power of  
attorney had been obtained? A. He did not know that it had been  
obtained. Dr. Griffith had told him that he would get one. That  
is the reason I asked Dr. Griffith if he had one.

Q. And was not your conversation with Dr. Griffith after the  
power of attorney had been obtained and after they had met at  
Ball's house? A. It was after they had met at Ball's house, but I  
did not know that a power of attorney had been obtained and for  
that reason I asked. This whole affair, Mr. Merillat, was hurriedly  
done. The check was drawn and Dr. Stewart I think went out to  
have it certified whilst I went to get a team to drive down there.  
It was not a great deal of time spent in deciding and carrying out  
the matter.

Q. You have stated that you were to pass upon the sufficiency of  
the title? A. Yes, sir.

Q. Why was not that stated in the contract? A. It is so stated  
in the contract. At least it is not stated that Mr. Roberts was  
244 to pass upon the sufficiency and I stated to Dr. Griffith that  
I would pass upon the sufficiency and Mr. Roberts was to  
make the abstract of title and to make the deed, but whether that  
title was good or not was to be determined by me with the under-  
standing had with Dr. Griffith and the contract directly bears out  
that view.

Q. The contract says that deeds and abstracts are to be prepared  
based on title searches made by J. K. Roberts, attorney, showing  
a clear and unencumbered fee simple title in the land above de-  
scribed in Ball. I would like you to state why if you were to pass  
upon the sufficiency there was nothing in that contract written which  
in any wise referred to your part of the matter. A. I would rather  
have the original papers I drew before answering that question.

Mr. THOMAS: That is what I refer to when I ask Mr. Merillat to  
look at the note. I recall that there were two papers in the hand-  
writing of Mr. Thomas introduced in evidence and I submit he  
ought to be interrogated about those papers and not any others.

Mr. MERILLAT: I may say that the witness has stated that the one  
of record was a literal copy of the one he drew.

Mr. THOMAS: I don't so understand that he ever said that the one  
of record, if you refer to Exhibit A-1, is a copy of what he drew,  
and I understand that it is not. We have never admitted that in  
this case. The paper that the witness referred to was the paper that  
Dr. Stewart produced at the first time when the witness was on  
the stand the other day.



WITNESS: The typewritten copy. I was represented in  
245 that.

Mr. THOMAS: You might as well tell us what paper you have got or it won't appear in this record.

A. I have now the original contract which I drew in Dr. Griffith's office, a duplicate of which is held by Dr. Stewart. Concerning the making of the abstract in this original document which I drew appears the following: "Proper deed or deeds of conveyance and abstracts of title of said land title search therefor (not title searches as in this other copy) to be made showing clear and unencumbered fee simple title in said lands in said grantor Ball and one-half of the cost thereof not exceeding in all the sum of fifty dollars is to be paid by said Stewart and one-half by said Griffith." I had already told Dr. Griffith that I would make the examination as to the sufficiency of the title before drawing that.

Q. I would like to ask you whether or not you were present when Dr. Stewart signed the deed or contract which was placed of record?

A. On June 6th in the office of the oil company?

Q. Yes, sir. A. Yes, sir.

Q. I will ask you whether or not that completed and final copy does not state that the title search therefor was to be made by J. K. Roberts, attorney of Upper Marlboro. I herewith hand you a certified copy and ask you if that is not correct?

Mr. THOMAS: I object to that because the paper—the original paper has been offered in evidence.

246 Mr. MERILLAT: Where is it? I will offer you that if counsel has the original paper.

Mr. THOMAS: It has been offered in evidence. I offered it at the last session.

Mr. MERILLAT: Where is it, Mr. Wilson? Have you the original? (Hereupon the Examiner produced the paper.)

Q. I hand you herewith the original deed or contract signed by Dr. Stewart and witnessed by you and ask you whether or not it does not state that the title search and abstract were to be made by J. K. Roberts? A. (Witness takes paper and reads.) "Proper deed or deeds of conveyance and abstracts of title of the said land based upon title search therefor is to be made and by J. K. Roberts, attorney Upper Marlboro, Md., showing clear and unincumbered fee simple title." That is what this reads.

Q. If you were to pass upon the sufficiency of it how does it happen that you did not appear in any way in the formal instrument as the party in question? A. This is the instrument which I drew and signed down there and Dr. Griffith also signed it. It was witnessed by Mr. Roberts, and the duplicate of this was left with Dr. Griffith. Mr. Roberts was to make a typewritten copy of this duplicate and also bring it to be signed by Dr. Stewart, it already having been signed by Dr. Griffith. It is evident that Mr. Roberts must have inserted in there his name which I had not put in there when this was drawn in pursuance of the understanding that Mr.

247 Roberts was to make a title search as he testifies in his direct examination. I may say when this was drawn and before its execution I had not seen Mr. Roberts. We assumed that he

would do it having drawn it. We took it out to him and met him out on the street. He looked it over and said "all right," and I went back to make a duplicate and then I knew that he would do it for fifty dollars as Griffith had suggested.

Q. Your contract in your handwriting was drawn then prior to the definite and absolute agreement upon the person who should pass upon it—upon Mr. Roberts. Is that correct? A. I do not quite understand your question.

Q. I will ask you whether or not your copy of the contract was not drawn prior to the time that Mr. Roberts was definitely agreed upon as the person? A. To do what?

Q. To do the work stated; namely, that of making the title search and abstract of title? A. The understanding was that I was to pass upon the sufficiency of the title. Mr. Roberts was to go through the records and to send an abstract of what appeared in the record and also to furnish the deed, and for that he was to get fifty dollars.

Q. Mr. Roberts states that the agreement was that he was to make the search and pass upon the title. Is that correct? A. I do not so understand that Mr. Roberts testifies to that. I have looked at his testimony very carefully and I do not understand it. If he does state it it is incorrect.

Q. You were the attorney and passed upon this deed which  
248 was executed by Dr. Griffith, were you not? A. Which deed?

Q. I refer now to the typewritten deed which is signed by L. A. Griffith, agent, and by William W. Stewart personally, and as witnessed by you, being the original paper which you yourself have produced. A. I do not take that to be a deed. It is a contract for the purchase as I view it.

Q. Did you not pass upon this as attorney prior to its execution? A. When Mr. Roberts came up he brought this and I took one of them—I think this one which is in my own handwriting it being difficult to read, and he held that one.

Mr. THOMAS: When you say that one, what do you mean? That does not read anything on the record when you commence to read it to the court.

A. I took this written agreement of my own made in Dr. Griffith's office and Mr. Roberts took the typewritten copy of this.

Mr. THOMAS: Well, refer to them by exhibits.

A. Well, I read and held this one marked exhibit and Mr. Roberts read this one marked defendant's exhibit A. W. T. No. 4, and we compared it in that way.

Q. Is it your contention then that you did not know that there was in the paper signed by Dr. Stewart in the Stewart Building the statement "based upon title search therefor is to be made and by J. K. Roberts, attorney, Upper Marlboro, Maryland, showing clear and unincumbered fee simple title"? Do you contend that  
249 that was not in the signed paper? A. It was added in pursuance of the agreement made that Mr. Roberts was to make the title search and I was to pass upon the title. It does not say that Mr. Roberts was to pass upon the title. I told Dr. Griffith I,

of course, would pass upon the title as attorney for the oil company and as secretary of the company. Mr. Roberts does not testify that he was to pass upon the title in his testimony as I have looked at it. It reads that he was to make an abstract and deed.

Q. Why was it, Mr. Thomas, that in all the papers and everything that was done, including the checks and letters, and the letter that you had—which you say you had from Dr. Stewart accrediting you to Dr. Griffith, and other papers, and nowheres did the Maryland Oil and Development Company come in and yet you now claim that it was the party interested and that you represented the oil company and not as a matter of fact Dr. Stewart, the party who everywhere appears? A. Now, I would be very glad to answer that question, if I could take it up, but it is too long for me.

(Hereupon the question was read.)

A. I can only say that in point of fact I did represent the Maryland Oil and Development Company.

Q. I believe you stated that you did not directly apprise Dr. Griffith of that fact? A. That is true. I stated so.

Mr. THOMAS: He has asked you why.

Mr. MERILLAT: I object to counsel interrupting my examination. They have no right to do that and know it.

A. Well, I stated heretofore that I supposed that Dr. Griffith and Dr. Stewart had an understanding as to that. In June, 1903 the Directors of the Maryland Oil and Development Co. were, I think, seven in number. There has been some changes in that directorate. Dr. Stewart, Mr. Fred Briggs, and R. C. Baughman, Mr. Snyder, of Baltimore, and a gentleman connected with the Delaware Trust Co. In May and June there were six instead of seven. I have already mentioned Dr. Stewart and Mr. Snyder and Mr. Fred Briggs. There was a change made sometime in the Spring and I am trying to find out whether that was before this time or not. Phil W. Chew, and also Mr. Messenier, who is the one connected with the trust Co. There was also a change down there before this. There was another man there; Gardner W. Kimball. In the month of November, 1903, we were still boring for oil. We were hopeful of striking oil one minute and brokenhearted the next but generally hopeful. Regarding whether we were not ready to relinquish in November any claim on this land, I could not speak for the Maryland Oil and Development Co. regarding it.

I do not understand that my personal feelings as to whether I was absolutely ready to relinquish all right on that land in December had any bearing on this contract. I was and am now secretary of that company, and at these interviews with Mr. Ambrose and Dr. Griffith I represented the company. As to whether I made no objection except as to matters to which I thought the title was not

sufficiently clear or good, I made a number of objections. I made objections to paying the taxes, I did not think that was fair. I made an objection at first, to paying half of the survey. I was not authorized to add that extra expense. I am speaking of matters that occurred in June at Dr. Griffith's office.

Now if I have got the right time I will try to answer the question.

I understand now, you refer to the time when Dr. Griffith and Mr. Ambrose came to the office of the Maryland Oil and Development Co. on December 8. That is the only time I ever saw Dr. Griffith on December 8. I had no interview with him and did not see him at any other time.

With reference to December 8th my position was this; that the contract called for a clear and unencumbered fee simple title, namely, Mr. Ball had died and they did not have the power to give the title as the matters then stood, and moreover the abstract which had been sent to me only ran down to June 11th and I said at that time "make that title good. You cannot give a good title at the present time. Make it good. That is the first step for you to do."

I did not at that time claim the right to forfeit that contract I told them that the title should be made good. That was the first step. The question whether or not I did not claim the right to forfeit might have been asked me, but I did not answer it. My reply was "Make your title good." "That is the first thing for you to do." I raised a number of objections, including the power of the court to pass the order. I think that stands good to-day. There was no conversation that I know of between myself and any other

252 officers of the company to the effect that "Now Ball was dead, you could have a public sale and buy it in cheap at a public sale and would not need to pay the contract price."

There was no conversation of this kind at all. The first time I ever heard that discussed was when something was said here by you the other day in the other room. I never heard it mentioned before. That consideration has never been talked of in my presence by anybody. I never wrote any letter to Dr. Griffith that I am aware of stating that I represented the Maryland Oil and Development Co., whose attorney I now claim to have been in that transaction, instead of Dr. Stewart, who was the only person mentioned in it.

There was a note taken down there by me.

WASHINGTON, D. C., *October 14, 1904,*  
Friday, at 3:30 o'clock.

*Testimony of Mr. A. W. Thomas.*

I do not think that the company had other options than the Ball option. No members of the company as far as I know, Dr. Stewart included, had any option there. I don't know whether they have any since. I don't know of my personal knowledge all the details of the transaction that have been carried on regarding the leasing of lands individually.

I do not know that Dr. Stewart has acquired any option on any property down there. Mr. Roberts had never been employed by the company. He was employed by Mr. Lendner and Mr. Briggs, in the original purchase of some of those tracts of land.

Q. Was that employment to search the title. A. Yes,  
253 sir.

Q. And pass upon it. A. But not by the company. That is by the individuals who sold the land to the syndicate.

Q. Had he any employment from Dr. Stewart in that connection?  
A. Not that I know of.

In regard to whether Dr. Stewart was interested in the purchase made by Lendner and Briggs, I say he was interested in that he put some money into the syndicate, but not in getting the land at all. He secured certain shares of the syndicate but had nothing to do with the acquiring of the land. Lendner and Briggs did not acquire for the syndicate. They acquired for themselves and formed the syndicate afterwards. They started to get 1000 acres of land and after they got along in the proposition, why Dr. Stewart came in and put some money in it, but the lands had been agreed for, however, before he came in. I do not know whether Stewart's money was used to pay for these lands in part. The money I think was paid to Lendner and Briggs and what they did with it, I do not know. They made their own bargains. Then it was turned over to the syndicate.

In answer to the question whether the syndicate was formed before the purchase of these lands was completed, whether it was made before the money was paid down wherewith the purchases were made, I say that the lands were all bargained for on the agreement or contract of some kind by Lendner and Briggs for 1000 acres. Some  
254 payments had been made. Quite a share of payments had been made on those lands. I think small payments had been made on some two or three tracts. I don't know how many, one or two. As to whether or not as I understand it the syndicate was formed and it furnished the payments and took the lands, Lendner and Briggs assumed first to get 1000 acres together for this oil development. They did make the bargains—that is to my recollection, and paid the money and secured the 1000 acres, but before the final payments were made, Dr. Stewart became interested and put in some money. That is he paid it to Lendner and Briggs, or Mr. Lendner, and what exactly was done with that particular money I do not know.

Mr. Lendner and Mr. Briggs and Mr. R. P. Evans and myself were the ones originally interested in the thing. Mr. Lendner and Mr. Briggs and Mr. R. P. Evans and myself initiated the acquisition of the 1000 acres of land. That was my plan. I do not know who interested Dr. Stewart. He first came in after the land was agreed for and bargained for and partly paid for. He in some way became interested in it by hearing or seeing something and put some money in it. Prior to the 5th day of June, 1903, or any other time I had never been Dr. Stewart's attorney that I recollect of. He may have asked me some question at some time about some little thing or advice. I don't recollect of ever having been except in one little matter. I gathered him up a brief in a little matter not relating to this this fall.

In reply to your question how much either in money or shares of

stock was paid by the company to the syndicate for this 1000 acres of land, the witness in reply said he would prefer to speak  
255 from the books and furnished the following written statement:

Of the one thousand acres now owned by the Company, Lendner and Briggs originally owned about three hundred acres, being the home farm upon which the indications of oil were discovered and on which the wells have been drilled. That tract was believed to be the most valuable of all the one thousand acres, and to protect it Lendner and Briggs bought six adjacent tracts of land amounting to seven hundred acres, making in all one thousand acres which they turned over to the syndicate. Of this one thousand acres a large part of one-third is tillable land on which crops have been and are being raised. The rest consists of cleared and grazing and wood land, some of it quite valuable for timber, the company having already cut off therefrom over one thousand cords.

For the seven hundred acres Lendner and Briggs paid from \$12. to \$20.00 an acre, in all about the sum of \$11,000.00. No valuation could be well put upon the home tract of three hundred acres owned by Lendner and Briggs on which were the oil indications, but Lendner and Briggs put that in with the seven hundred acres turned it over to the syndicate and took syndicate stock in exchange for the same. The entire tract of one thousand acres was capitalized, nominally, in the syndicate at \$100,000, being the then total estimate of the land, oil indications and all. The land itself, the 1000 acres, regardless of oil indications was not then, and would not now be worth to exceed \$20,000.00, including houses and buildings on all of the various tracts, on which there are several.

256 The syndicate began and carried on for several months the drilling operations, and after we had struck what we considered favorable indications the entire one thousand acres, well, development, indications, and prospects were turned over to the Maryland Oil Development Company by the syndicate, the capitalization of the Company being nominally \$150,000, composed of 30,000 shares of par value of \$5.00 per share. The members of the syndicate took in exchange for the one thousand acres of land development, oil indications, etc., in all 14,000 shares of Company stock at two dollars a share. Sales of the remaining stock of the Company, the 16,000 shares of Treasury stock have been made from time to time for development work at from \$2.50 to \$3.60 per share and over one-third of the total capitalization of 30,000 shares, or 10,000 shares are now in the treasury, although nobody is clamoring for them to-day.

This is as near and fully as I can answer you. This answer may appear to be more in detail than the question calls for, but it would be substantially the result of redirect examination to be conducted by Mr. Thomas, if I were confined to a mere answer of the question.

Q. Who recorded the paper which has been produced by the defendant in the county court of Marlboro?

Mr. THOMAS: What paper? I object to it being referred to in that indefinite way.



Mr. MERILLAT: I mean there by the deed or agreement for the sale of this land by Dr. Griffith to Dr. Stewart.

Mr. THOMAS: I object to it unless the paper is shown the witness.

257 Mr. MERILLAT: Being defendant's exhibit "A. W. T. No. 4."

A. My understanding was that this contract——

Mr. THOMAS: If you know. I object to the witness' understanding.

Q. Who delivered it for record? A. I did not. I can state what I believe about it or believe to be true about it, but I did not personally send it down to the record. There is some testimony on that point already in the case I remember.

Q. Defendant's exhibit A. W. T. No. 4 was signed at your office by Dr. Stewart in your presence, was it not? A. Is that defendant's exhibit A. W. T. No. 4 that you refer to?

Q. Yes, sir. (Counsel hands witness exhibit.) A. Yes, sir, that was signed by Dr. Stewart in my presence and in the office of the Maryland Oil and Development Company on the 6th day of June instead of the 5th, but it staid that way.

Q. To whom was that paper delivered after the signature by Dr. Stewart? A. Delivered to me.

Q. What did you do with it? A. I handed it to Dr. Stewart and he put it in his safe, I think. He put it in his safe and it staid there in the office. He did that with the papers of the company sometimes.

Q. As I understand it then, defendant's exhibit A. W. T. 258 No. 4, after the signing, was delivered to Dr. W. W. Stewart.

Is that correct? A. No, sir, I don't so understand it. It was delivered to me. I took it.

Q. And by you delivered to Dr. Stewart? A. Then it was put in his safe for the accommodation of the company. He had papers of the company in his safe, and some there now.

Q. When you delivered it to Dr. Stewart did it consist and comprise the whole of the papers that now form a part of said defendant's exhibit A. W. T. No. 4? A. My statement I made here the other day is: To the best of my recollection I never saw that here at that time.

Mr. THOMAS: What do you mean by speaking of that as "that here"? I object.

WITNESS: What is stated to be the power of attorney. It may have been there, but I do not recollect it.

Q. You have no personal knowledge then as to how this entire paper came to reach the clerk of the court for record? A. I have not by personal knowledge.

Q. Have you any knowledge derived from Dr. Stewart? A. I have this in mind, that I asked Dr. Stewart to send that down to have it recorded. I think that was after the death of the first Ball, the brother. He told me he had done it and the check which has been

put in evidence of \$1.25 of the Maryland Oil and Development Company was given for that purpose to pay the recorder's fee.

259 Q. This is the paper, as you understand it, which Dr. Stewart recorded? A. As far as I know. I know the contract part of it. The other part of it which is called the power of attorney I do not know. It is a surprise to me, that thing is any way.

Q. How does it happen that the paper that was recorded has attached to it and as a part of it the power of attorney from Alfred W. Ball to—

Mr. THOMAS: I object on the ground that the paper is not the power of attorney from Alfred W. Ball. It is a mere typewritten paper without any genuine signature attached to it at all.

Q. I ask you then to re-phrase my question. How does it happen that the paper recorded bears attached to it, and as a part of it, a typewritten power of attorney? A. Well, that is a mystery to me. I have dug into my recollection to ascertain that fact, how it was attached to it, but I cannot say. I do not know. I have no recollection of that.

Q. In whose handwriting, if you know, are the words "L. A. Griffith, agent," etc.?

Mr. THOMAS: Whereabouts in the paper please?

Mr. MERILLAT: On the endorsed back of the paper.

A. That is not mine. I do not know whose it is. I am not an expert in handwriting.

Q. Have you any knowledge of the delivery of this power of attorney which is attached to the contract, or deed of sale—  
260 this typewritten paper being signed in typewriting "Alfred W. Ball," having been delivered to Dr. Stewart? A. I have not.

Q. Do you know whether or not Dr. Stewart received that typewritten power of attorney at the same time that he received the agreement? A. I could not say that he did and I could not say that he did not. I have no recollection of ever having seen that until whilst this case was being tried or on hearing when it came back from the recorder's office. That is the first time I have any recollection of ever seeing it.

Q. Have you any knowledge from Dr. Stewart as to whether or not that came into his possession and, if so, how prior to its being recorded? A. No, sir, I don't think I have any knowledge on that point.

Q. You do not know how it happens then that the power of attorney recorded differs from the power of attorney which you say you saw? A. When?

Q. Well, I am asking you when, if at all, prior to the recording of the paper you saw any power of attorney? A. That is on the morning of June 6th, the power of attorney which Mr. Roberts brought up and showed to me at the time that the paper was executed. That was the power of attorney which is down in the Orphans' Court now at Upper Marlboro.

Q. Well, do you know how it happens that the power of attorney

261 which appears to have been recorded after the payment of the check of \$1.25 of the Maryland Oil and Development Company happens to be a different power of attorney from the one you say was shown to you by Mr. Roberts on June 6th?

Mr. THOMAS: I object to that on the ground that the paper upon its face shows that it is not a power of attorney. It is a mere copy, or a mere made up paper not signed by anybody.

A. I do not know, as I have stated a number of times.

Q. Your functions, as I understand it, in this case was that of the attorney charged with seeing to the proper legal carrying out of the agreement? A. Why, I represented the Maryland Oil and Development Company as their attorney and as their secretary.

Q. Had Dr. Stewart prior to your visit to Marlboro informed you that he had seen any power of attorney from Ball to Griffith? A. He did not. He stated to me that there was to be a power of attorney obtained by Dr. Griffith.

Q. Do I understand then that you, although the attorney charged with the matter, paid the five hundred dollar check and signed the agreements for the sale of this property without seeing whether Griffith had the right to sell the property or not, or had any proper authority therefor? A. I got Dr. Griffith's statement that he had a power of attorney and that he would send it or send a certified copy of it to me. I took his word to be true and acted upon it.

Q. You did not know what the terms of that power of attorney were and had not read it? A. I had not seen it.

Q. Had he told you what were its terms? A. I don't think he did in detail, except he had the power to make the contract, 262 and, of course, in shaping the contract we talked as to what points were to be covered; that one acre for the burial lot and the survey, etc.

Q. But you delivered the certified check for five hundred dollars and closed the transaction without seeing the basis of the agent's right to negotiate the deal? A. I did and on Dr. Griffith's assurance, which I took to be, from a responsible party, as I supposed, to carry out the agreement made already.

Q. Dr. Griffith says that he inquired particularly if it was a *bona fide* sale and no option and stated that Ball had given him no authority to grant or sell any option. Did any such conversation occur? A. Dr. Griffith is entirely mistaken in that statement.

Q. Now, you stated in your evidence that Dr. Griffith went out to find Roberts and left you drawing the contract. Is that correct? A. He first went out to find the surveyor and Mr. Roberts and left me drawing the contract. He came back with the surveyor and then went out again to see Mr. Roberts, I think.

Q. Where was it you saw Mr. Roberts? A. Out on the street the first I saw him.

Q. Not in the office? A. I think we went into his office, but I met him on the street.

Q. He did not then come into the office where you were 263 drafting or had just drafted the contract? A. I took the contract to him outside. Dr. Griffith came back and told me

that he had seen Mr. Roberts and that Roberts would come over and by the time I got the contract finished Mr. Roberts had not come and I went out with Dr. Griffith and hunted him up and found him on the street.

Q. Roberts, I believe, had prior employment in connection with the sale of the lands the company now owns? A. Only with the persons who originally bought the land. Never for the company.

Q. Didn't he have employment for the syndicate or for Dr. Stewart? Hadn't he been employed by Dr. Stewart prior thereto? A. Not as I know of in reference to any lands owned by the company.

Q. In your testimony you were asked what answer or reply you made when Dr. Griffith said he wanted to know what you meant by that five hundred dollar close and that it might be forfeited and you replied at page 111, "I meant what I said. That is all." Was that the whole of the conversation or of your reply? A. That is not my answer. That was only a part of the answer which was taken down under a misapprehension. Whilst we are right here in connection with the question asked a moment ago about Mr. Roberts I wish to make that straight. Mr. Roberts was employed by Lendner and Briggs in the matter of the title to some of the lands. Payments

had been made on those lands by Lendner and Briggs, but  
264 the final payments were not completed and there was some delay in the obtaining of some papers and after the syndicate was formed and before they were deeded to the syndicate there was some correspondence, I presume, to Mr. Roberts to hurry up and finish up with the papers of the lands purchased by Lendner and Briggs.

Q. At page 111 you said, "that is what I said in reply to his question that you read there asking me what I meant by the five hundred dollars and I replied that I meant what I said." Do I understand that your words, "I meant what I said," was the answer you gave to Dr. Griffith? A. No, sir, if you will read further down you will see that that matter is entirely settled.

Q. Later on, "I said I meant that if the money was not paid on November 7th the five hundred dollars would be forfeited. In reply to his inquiry that is what I said." A. That was my answer to Dr. Griffith's inquiry.

Q. The words, then, "I replied that I meant what I said"—  
A. Were not said to Dr. Griffith.

Q. Were not said to Dr. Griffith? A. No, sir.

Q. You did not, I believe, know as to whether or not Dr. Griffith had a power of attorney which gave no right to sell an option? A. All I knew was that Dr. Griffith said he had a power of attorney  
265 in connection with our conversation and the agreement which I said had been made, the details were given as to the sale of the 240 acres at forty dollars an acre, and about the burial lot and five hundred dollars to be paid down and on November 7th the balance of the purchase money. The power of attorney, I had no particular knowledge of it other than what occurred in the conversation. I never saw it.

Q. You have practiced law for sometime, Mr. Thomas? A. Yes, sir.

Q. Where? A. I have practiced in Connecticut and Chicago.

Q. Whereabouts in Connecticut? A. I practiced in New Haven and I practiced in El Paso, Texas, and I practiced in Chicago for ten years.

Q. You knew, did you not, that the authority of an agent was dependent upon the power that he had and that it was necessary to see the power to know whether or not he could make an agreement of a particular kind? In other words, that a power of sale—general power of sale of land would not confer the power to convey or sell an option? A. I presume I knew about as much about a power of attorney as the average lawyer. I might go into an elaborate thesis on this point, but I don't think you want it.

Q. My question simply calls for yes or no. A. I don't understand that I can answer that question either by yes or no, as I understand it.

Q. If you wanted to keep this from the public and you thought it only an option, why did you record it at all? A. The  
266 reason I asked Dr. Stewart to record it was because Ball's brother had died and I did not know what might happen.

Q. You knew, did you not, that Ball's brother was not interested in it at all and had so been informed at the time you delivered the check? A. Yes, sir, I understand, but what if Alfred Ball should die. It was well to have the matter of record.

Q. Would that advantage you—give you any different footing after the death of Alfred Ball, if he should die? Why would that help you in any way, whether it was recorded or not recorded? A. I can only say in my suggestion to Dr. Stewart was after the death of the other brother that he send that down and have it recorded.

Q. It is not generally customary to record options, is it, especially? A. I don't know what the custom is here.

Q. Especially where you want to keep the thing quiet? A. We kept it quiet. It appeared to be in the name of Dr. Stewart rather than in the name of the oil company even when it was recorded.

Mr. THOMAS: I suggest when it was recorded down in Marlboro it was dead enough for a long while. That is the jumping off place.

Q. I believe you have stated in your direct examination that Roberts was simply to typewrite the agreement that you had and he did so and did not make any changes. Isn't it a fact that  
267 quite a number of changes were made by Roberts in the paper that was recorded from the agreement that you drew?

A. There was one or two slight changes in no way affecting the agreement. I think we mentioned that when we compared them. I haven't them in mind now, but by comparing the two I could say what they were. He put in that "J. K. Roberts, attorney, Upper Marlboro." It was the change which he made in accordance with the agreement which had been made.

Q. Did you know of that change? A. I think I did now that

you call my attention to it. The other day when you called my attention to it I recollected it. It was a copy of the agreement in every substantial feature and in nearly every word except one or two places like what I have spoken of, "J. K. Roberts, attorney, Upper Marlboro," being put in.

Q. Aren't there as a matter of fact places where as many as two or three lines inserted by Mr. Roberts, and that he was simply to draft a full agreement embodying just the lines and ideas as were in the other one? A. That was entirely a mistake in Mr. Roberts if he so understood it.

Q. As a matter of fact didn't he do just that very thing? A. He did not. He made a copy and in one or two places of no special import he added a matter which was called to my attention, when we compared it, but if you take that and read it line for line you will find it is a copy of the contract I drew, which he was to copy in typewriting that way. He did not undertake to make a new agreement at all.

Q. My question is, didn't he, as a matter of fact, undertake to and didn't he typewrite the agreement that you made amplifying that agreement where necessary and drafting it where necessary, but not, of course, changing its import or purport? A. The understanding was that Mr. Roberts should typewrite that contract.

Q. Literally? A. That was the only understanding I had with him.

Q. Literally or in substance? A. Literally, and when he came up that day he had written in here, "J. K. Roberts, attorney, Upper Marlboro," and one or two minor matters like that which carried out the agreement that we had. He did not draft a new contract or modify it in any essential particular, but it was his understanding that I had with him that he would typewrite it for me in duplicate and a comparison of this contract with my written contract will bear out what I say.

Q. This land that you say you had acquired, where, with reference to the pike, was that land of yours? A. The pike from Centerville?

Q. Marlboro to Washington pike. A. This piece of land is just west of the Ball tract. If the points of the compass are right in my mind it is just west of the Ball tract and north.

269 Q. My question is simply, how far is it from the pike—the Marlboro and Washington pike? A. Well, it may be a quarter of a mile or more in a straight line.

Q. The large tract I am referring to, and not the three acre tract. A. I understand. The twenty-seven acre tract. That land, as I have testified, has a high-way on three sides and considerable timber on it.

Q. I believe you were not present at the conversation which Dr. Griffith says occurred in November when Stewart told him that he represented the oil company and Dr. Griffith said he replied that he looked to Stewart exclusively? A. I never saw Dr. Griffith and Dr. Stewart together at any time only when he came up on December 8th and in February.



Q. And Dr. Griffith does not say in his testimony anywheres that you were present, does he? A. That testimony is not in my mind now clearly. The record will show.

Q. Was anything said when the subject of taxes came up to the effect that as they could not cut wood or anything of that sort you ought to pay the taxes from the time of the sale for the half year? A. There might have been something said. I know there was some talk. I did not think we ought to do it.

Q. Was there any talk to the effect that they could not  
270 cut any wood? A. The understanding was that they could cut all the wood they wanted for their own use. That contract provides for that. Of course, not to sell wood, but it provides for their cutting all the wood they wanted for their own use. I said "they," I meant Mr. Alfred Ball. The contract says that.

Q. Then, as I understand it, during the life of what you call the option-contract they were forbidden to make use of the land for profit? A. Why here is the contract which speaks for itself and says: "That they (the said Ball) is to have the right to continue and dwell and live in the house now occupied by him on the said land herein mentioned and cut and use the necessary fire wood therefrom up until April 1st, 1904." That answers your question, Mr. Merillat, I think.

Q. Did you and Dr. Stewart have any conversation at the time or prior to your letter of November 23rd in which you represented that the oil company was alone interested in this land matter? A. Which letter do you refer to?

Q. And underscored it? The letter I say of November 23rd, which has been put in evidence by you? A. To whom is that, to Mr. Roberts?

(Hereupon counsel hands letter of November 23rd, 1903, to witness.)

A. Now, with reference to that letter there is no way of describing it except to describe it as a letter to Mr. Roberts of  
271 November 23rd, 1903, written by myself.

Q. My question was whether you had any conversation with Dr. Stewart prior to or at the time of writing this letter on the subject of writing it? A. I presume that I did.

Q. Don't you know—— A. I think so.

Q. Don't you know as a matter of fact that Dr. Stewart himself wrote a letter on that same day in which he also stated that the Maryland Oil and Development Company was alone interested and likewise underscored the words, "Maryland Oil and Development Company?" A. I don't know about the underscoring. I understand that he wrote a letter of that nature to Dr. Griffith.

Q. If as a matter of fact it was understood all along that the oil company was alone interested, why was it necessary for both of you to pro-est so much and write letters specifically naming and underscoring the Maryland Oil and Development Company as the party to the deal? A. Why that letter was sent for no particular purpose except the purpose for which it was written to call Mr. Robert's at-

tention to the fact that the abstract and title was not sufficient, and they having claimed that it was Dr. Stewart that was the party and I replied that they knew before that it was the Maryland Oil and Development Company and I presume Dr. Stewart did the same thing to Dr. Griffith.

272 Q. When did they claim prior to that that it was Dr. Stewart who was interested and not the Maryland Oil and Development Company? A. Why that had been the talk. Mr. Roberts when he came up to consult Dr. Stewart and me in his office after Mr. Ball's death and at the time Dr. Stewart told him that the Maryland Oil and Development Company was the party.

Q. Well, I say when prior to that— A. That was prior.

Q. To your knowledge had there been a claim that Dr. Stewart was the responsible party?

Mr. THOMAS: Prior to what?

Mr. MERILLAT: Prior to that letter of November 23rd, 1903.

A. My answer was that at the time when Mr. Roberts came up after Mr. Ball's death and at that conversation, which he narrated, with Dr. Stewart and me in the office of the oil company.

Q. Was anything said claiming that Dr. Stewart was the man to carry it out. A. Why that conversation with reference to the matter came up then.

Q. What conversation and what was said with reference to Dr. Stewart and what gave occasion to write that letter? A. Dr. Stewart at that time told Mr. Roberts that he was the party—that the oil company was the party to the thing:

273 Q. What, if anything had either Roberts or Griffith said to make it necessary for you to want to put of record in the form of a letter a statement that it was the oil company? A. After that time I went down to Upper Marlboro and looked at the records and found that there had been this order made by the Orphans' Court which assumed that Dr. Stewart was the party and in my letter I say to Mr. Roberts that I have made that examination of the records of the Orphans' Court and I again call his attention to the fact that the company was the party. If you will read the letter you will see it.

Q. You have stated that it was the result of a conversation with Mr. Roberts when he came up. A. It was the result of a conversation with Mr. Roberts and subsequent to the examination of mine of the records at Upper Marlboro.

Q. What did Mr. Roberts say at this conversation that implied that they were going to look to Dr. Stewart? A. I do not know that there was anything particular except that Dr. Stewart told him at that time that it was the oil company's matter.

Q. What did Roberts say to the effect that they were looking to Stewart?

Mr. THOMAS: He has answered that already. He said that Roberts did not say anything.

274 Q. I have asked him what, if anything, Roberts said?

Mr. THOMAS: He has already said that he did not say anything.

A. I have already answered that it was Dr. Stewart that said that thing.

Q. When did you go down to examine the records in the court?

A. It was just prior to writing this letter.

Mr. THOMAS: You mean the letter of November 23rd?

A. November 23rd, 1903. In this letter I, stated, "I have also examined the will of Mr. Ball and the record of the proceedings had in said Court in reference to the estate." Finding in there the order of the court made by the Orphans' Court ordering Dr. Stewart to carry out this contract I naturally would re-iterate in my communication that he was not the proper party and I presume Dr. Stewart also re-iterated the fact, having found out that that record was there in the Orphans' Court.

Q. Now, I will ask you whether or not prior to the death of Ball you made any objection of any sort whatsoever to Roberts' abstract of title? A. Mr. Roberts left the abstract of title with me for examination and to let him know if anything further was needed to be done and I had never had any communication with Mr. Roberts in reference to the abstract except on one occasion, I think it was, down in Marlboro, he asked me if I had looked that over  
275 and I said I had not yet, but that I would do so before long. I had made no objections to it at that time. There was no hurry about it.

Q. When did you first learn of Ball's death? A. I cannot give you the date when I first learned of it exactly. I understand from the letters that we have that Dr. Griffith sent a letter on November 6th or 7th after Mr. Ball's death in which he makes no mention of it. He sent that letter to Dr. Stewart.

Q. Hadn't heard up to the very time—— A. But I think we heard of his death before November 7th. I guess probably a day or two after. It might have been two hours. I do not know.

Q. Hadn't heard up to the day before the expiration of the time for the completion of the contract that was made and although you, the party to pass upon the sufficiency of the title, abstract as you state, had made no objection whatever or sent any communication with respect to that abstract of title? A. I have sent no communication. I made some examination, but I sent no communication in regard to it.

Q. So that the time for the completion of the contract had arrived without any word from you to the other party of any objection whatsoever to the abstract. Is that correct? A. Without any communication to either Mr. Roberts or Dr. Griffith. What communication Dr. Stewart may have had I cannot say.

276 Q. You have no knowledge of his making any objections of the title? A. None at which I was present.

Q. I simply say you have no knowledge of his making any objections to the title? A. Not that I know of.

Q. Had you made any objections to him and stated to him that there were defects to that title? A. Yes, sir.

Q. And you hadn't thought it necessary to have it cured or at-

tempt to do it prior to the time for the completion of the contract?  
A. I haven't done so.

Q. Dr. Griffith says that the first question you asked him at Marlboro was where was the power of attorney? A. He is mistaken about that as I have testified to before. I showed him the check and the conversation turned on the check and as to A. W. Ball's brother not being the owner, but Alfred Ball being the owner.

Q. His recollection then as to the conversation differs entirely from yours? A. It seems to.

Q. Now, at this time that you had met Griffith before and were carried in his vehicle. Had not the tire of your bicycle been punctured and was not that why he gave you a lift? A. I think it was. There was something about the wheel. I used to  
277 go down there on my wheel very often.

Q. And was not the only thing that was said about the oil well at all when you got to a place at which to go to the oil well—you said that you would get off there, that you were going down to see where they were boring for oil? A. No, sir, I told him when I got into the carriage that I was going down to Centerville to the oil well and we talked about the oil indications all the way down there and did not take about anything else.

Q. Did you give him your name? A. I did not.

Q. Nor your connection with the company? A. No, sir, I stated my reasons the other day.

Q. What sort of a grade is it, if you know, from the well to the Ball tract of land—the Ball road? The road in front of the Ball place? A. You mean whether the Ball place is higher or lower than the well?

Q. Yes, sir. A. There is a creek right at the well and that comes right out of the Ball swamp. That land there is two-thirds swamp, I guess. The Ball house is on a little higher ground than the other—some land right around the house and little to the west, but it must be pretty near the same grade as the well because that water flows right from there down to the well. There are three or four creeks  
278 that unite on the Ball place and come down there. On the Ball place there are two or three streams that wind here and there and all seem to unite and help to form that creek that flows right past the well. It is very swampy.

Q. Would the Ball tract have any value as an outlet or road from the oil well? A. I don't think it would be very valuable for a well without a great deal of expense.

Q. I said for a road. A. For a road I should say, without a very great expense, but if circumstances warranted a short cut that expense might be made if business demanded it.

Q. At the time when Roberts came up on June 6th did you have quite a little talk with him about this matter? A. No, sir, not extended talk. We compared the contracts.

Q. Well, was anything said at that time with respect to the oil company being the real party interested? A. As I testified the other day he said to me, "I understand that this is the oil company's purchase." I do not know that those are the exact words. I said,

"yes, but we don't want anything said about that." And he said, "I suppose then that they will pay the other half of my fee."

Q. Did he say anything as to how he understood it? A. That was what he said. He said, "I understand." That is what he said. "I understand that the oil company——"

Q. You replied that they were? A. Yes, sir, and it was their money.

279 Q. Do you know whether or not that was the first knowledge that Roberts had of the oil company being the real party in interest, and whether or not it had not been merely a surmise on his part that the oil company was the party in interest? A. I took it that Dr. Griffith had told him. I did not tell him down there that it was the oil company, but when he said "I understand it," I assumed that Dr. Griffith had told him in confidence that it was the oil company and, of course, I said, "yes, sir." He did not tell me how he understood it.

Q. Nothing was said to the effect that he got that information from Griffith? A. He did not say. I assumed that.

Q. Now, at this conversation when Mr. Ambrose was present was anything said—did Dr. Stewart say that he was ready to comply with the contract and carry it out when a valid title was given, but that he did not consider the title complete? A. On December 8th?

Q. Yes, sir. A. He did not in my presence or hearing. Nothing of the kind. Neither did I.

Q. You said that what you said was to go ahead—in fact, "Go ahead and perfect your title. That is the thing for you to do." A.

Perfect your title and the contract would stand pending the  
280 perfecting of the title.

Q. Did you say that the contract would be carried out if the title were perfected? A. I did not, but I said it would stand.

Q. Did you make a statement there that it would stand and if they would continue on and get the title perfected that then you would carry it out, or were they to go ahead and perfect the title and take the chances on your carrying it out? A. What I said was that they should go ahead and perfect their title and the contract would stand. Meaning, of course, the contract with the oil company.

Q. At any rate from what you said what would be done would be a compliance with these terms? A. Now, I stated that as near as I can recollect what I did say.

Q. I will ask you whether by what you said you meant to convey the idea that if they would go ahead that then you would take the land at the price stated? A. I did not say I would, and was not authorized to say so. I was employed as attorney for the oil company and as such said that they should perfect the title.

Q. What was to happen? A. And that the contract should stand pending the perfecting of the title.

Q. What was to happen after the title was perfected? A. I did not say.

281 Q. As I understand then, they were to go ahead and expend their money and time in perfecting the title without any agreement on your part, you representing the oil company as the at-

torney for the oil company, that the deal would be finally closed and carried out? A. They insisted that—Mr. Ambrose insisted that the title was all right except the abstract should be run down to the time of Mr. Ball's death. I assumed that they had no power to give a title under the order of the court.

Q. Please repeat the question and I ask the witness to respond to it.

(Hereupon the question was read.)

A. I don't see how I can answer that question any other way than I have. I want to get as near to it as I can. I stated that they should complete their title and the contract would stand pending that completion. Further than that I did not state.

Q. After it was completed, if it were completed, state what was to happen? A. There was nothing said as to what was to happen by me.

Q. Then you were to be at liberty after it was completed fully and finally to throw it up. Is that what I understand? A. I am now stating what I said. I suppose that is all I can state.

282 Q. Didn't they ask you anything as to whether or not you would as a matter of fact comply with and carry out that agreement if they did do what you wanted them to do? A. I don't think he did.

Q. Nothing at all? A. I don't think he did in that way. There was a good deal of talk back and forth. I guess neither party got any clear idea about it.

Q. Now, Mr. Ambrose, says that he made a suggestion that you get two title examiners, and three if need be, and also that they were willing to have anybody who was competent named to look into the title. Did he make any such suggestion? A. I think he made some such suggestion about that, to get some one to look into the title, but I assumed that I was going to pass on that title for the company and I told him that he must complete his title.

Q. Well, what was the final result and how did it happen that it was turned back to Roberts? A. What turned back to Roberts?

A. The abstract, with a view of his continuing it down. A. It was not turned back to Roberts by me. I took the abstract to Mr. Ambrose with that note which I put in evidence here the other day and asked him to go over it and come back and talk to me about it.

Q. Wasn't it agreed that Roberts should be the man to continue it? A. No, sir, it was Mr. Ambrose who *saw* me to look this thing over.

Q. Then as I understand they were to rest their rights entirely upon you fulfilling all of this contract and that they put everything in your hands; they were to go ahead with this work and then it would rest upon your words or *ipsit dixit* as to whether there would be a completion of the agreement? A. Not at all. The courts were open to them.

Q. Do I understand then that you understood that they had rights in the courts? A. If they thought so they had the right to go in there. Evidently they got in some way.

Q. Where was Dr. Stewart's office at the time of the conversation



in December between Griffith and Ambrose on the one side and yourself and Dr. Stewart on the other side? A. He moved into the rooms now occupied by him, suite 101 and 102, and the oil company had moved from those rooms up to room 307, which is now occupied by the company.

Q. Where did the conversation occur? A. It occurred in the oil company's office, 307; a small room.

Q. Was there any other room across the hall-way, or any other room which was used either by the oil company or Stewart? A. No, sir, the office is a small office right back of the elevator. It was a small room and as I said these other gentlemen, Capt. Lucas and Mr. Briggs and Mr. Baughman, came in and these other people went out and Dr. Stewart remained and we had a meeting there—consultation regarding a meeting right then and there.

Q. Were you present at any conversation at which Dr. Stewart said to Dr. Griffith, or any one representing him, "Well, go ahead and let them forfeit their five hundred dollars?" A. I don't know. It may have said that that morning. I do not know.

Q. "And sell their property if they don't meet their obligations?" Do you remember any such conversation as that? A. There may have been something of the kind said.

Q. Could you be more definite as to whether or not it did or did not happen? A. I think there was something of that nature said.

Q. The testimony is that that was said at a conversation that occurred the latter part of November. Is that correct? A. You are now referring to December the 8th, I suppose?

Q. No, sir; the testimony in this case is that that conversation occurred the latter part of November? A. I don't recollect any such testimony and I do not recollect any such conversation at that time unless it was December the 8th.

Q. And of that you have not a very definite recollection? A. No very definite recollection. There was considerable talk back and forth.

Q. When Dr. Griffith said that there was about 284 or 288 acres in the tract, what, if any, objection did Dr. Stewart make? A. Why it was said that 240 acres was what the contract called for.

Q. Was there any agreement that they would abide by what the survey showed on that point? A. I don't think there was. In fact we did not come to any agreement about anything that morning.

Q. You stated in your direct examination that Dr. Stewart was the president of this company for some several months or more after this agreement was made. Was not Capt. Lucas the president of the company in the month of July and are not you in error on that point? A. Capt. Lucas was made president of the company at the annual meeting which was in July, and I will thank you for correcting me.

Q. Now, is it not a fact that in December when Dr. Stewart said that it was the oil company that was interested in that matter that Mr. Ambrose replied that that was a matter that he did not know

anything about, it was between Stewart and the company?

286 A. I think Mr. Ambrose said something about he did not care who was the party. I do not recollect all that was said, but that is what I recollect about it.

Q. Do you recollect whether or not he made the suggestion that it was a matter between Dr. Stewart and the company? A. He might have said so, but I know he said in the beginning that he did not care who was the party and sort of laughed. That was when he first came in.

Q. What was your idea in stating these objections if you did not propose to carry out the agreement after the objections were overcome, if possible? A. Well, as I understand your question you assume that I did not propose to carry out the agreement. I do not know that I said anything of the kind and so I could not answer your question shaped in that way.

Q. Was it your aim and purpose at the time then to leave them foot-loose and to keep the other side bound? A. All that I can say about it is what took place there. Intentions are very vague things and they would not bind anybody, and because the company was the party in this matter and I was not personally.

Q. You were the company at that time and representing it? A. No, sir, I was not the company. I was its secretary, but I could not bind them. I did not assume to bind them, only in a legal way to perfect the title.

287 Q. You were representing them as their attorney? A. Yes, sir.

Q. And as I understand you then you, as representing the company, were to be free if oil developed there to take and complete the contract, but were not putting the company in a position where it could be required later on to take the property if they wanted to avoid it. Is that correct? A. I don't say anything of the kind, but the company was perfectly free to forfeit the five hundred dollars if they wanted to, as I understand the purport of that contract.

Q. Was your aim to have them likewise free to carry it out and enforce its fulfillment if they desired such a thing? A. I am not speaking about any aim or anything in my mind at that time, but I am speaking about what was the meaning of the contract, as I understand it, that they would have the right to forfeit that five hundred dollars. Beyond that I was not prepared to state anything at that time.

Q. Did you use words calculated to preserve in the company a subsequent right to enforce the fulfillment of that contract later on if they desired to do such a thing? A. Well, now, I have stated as near as I can what I did say and what those words were calculated to was a matter of inference.

Q. This minute book that you have produced is made up of loose sheets, is it not? A. Yes, sir.

Mr. MERILLAT: That is all.

WASHINGTON, D. C., December 7th, 1904,  
Wednesday, at 3:30 p. m.

*Testimony of Dr. William W. Stewart.*

My name is William W. Stewart; am an attorney at law; and member of the bar of the District of Columbia. Prior to practicing law, I graduated in dentistry, and practiced dentistry here. I graduated at the University of Pennsylvania.

I practiced dentistry from 1891 to 1903. Let me see—in the District of Columbia I guess I practiced nearly thirteen years. I stopped practicing dentistry in November, 1903.

I was president of the Maryland Oil and Development Co. from the time that it purchased out the rights of the syndicate—the Maryland Syndicate. From February (July) 1902, I think it was—February 28 or something of that kind to the present time—no, sir, up to last July I was president of the Maryland Oil and Development Company as near as I can recollect. Mr. A. W. Thomas was secretary of the company during all this time. The offices of this company during the whole time of its existence have been in the Stewart Building. During the month of June, 1903 the offices of this company were located in rooms 101 and 102 Stewart Building. My offices at that time were located in that building on the second floor, rooms 204 and 205. Rooms 101 and 102 are on the first floor. At that time, June, 1903, I was practicing dentistry. The

Maryland Oil and Development Co. moved from rooms 101  
289 and 102 about December first, 1903. They moved to room  
307 on the third floor Stewart building. That is the room  
now occupied by the Maryland Oil and Development Co.

*Argument by counsel.*

I was representing the Maryland Oil and Development Co. and was associated with, or had Mr. George R. Leapley as an associate, and we were taking leases in Prince George's County, Maryland, on all the lands we could acquire by lease in and around and adjoining the property now owned by the Maryland Oil and Development Co. Mr. Leapley was instructed to get a lease on the Ball tract. He reported to me that he was unable to get a lease and that the Ball brothers had authorized Dr. L. A. Griffith to act as their agent for the land. So I instructed Mr. Leapley to call on Dr. Griffith to see him in regard to leasing the land. He reported to me that he thought it necessary that I should go to see Dr. Griffith myself personally, and that he had spoken to Dr. Griffith to that effect, and so Mr. Leapley and I drove to Marlboro and called upon Dr. Griffith. I reported to the Board of Directors in regard to this tract. We had an executive committee formed and Mr. Thomas

was secretary acting for the executive committee and the board of directors. I was instructed to try to secure a lease of the Ball property especially because it was adjoining our original holdings.

Complainant's counsel renewed objections as to what occurred between Stewart and the board.

290 And if we could not acquire a lease we were to try to get an option on the same, putting up as little money as possible.

After having had this talk with Leapley, and after having instructions from the board of directors and the executive committee, we called on Dr. Griffith in Marlboro—Mr. Leapley and I did. Mr. Leapley introduced me as Dr. Stewart, the president of the Maryland Oil and Development Co. I stated to Dr. Griffith that we would like to get a lease—the Maryland Oil and Development Co.—of the Ball tract, stating to him that I thought that we ought to be shown all the courtesy in the matter from the fact that we were spending large sums of money, in fact many thousands of dollars for the development of that territory, and that it was due all citizens and property holders there to encourage us and give us any advantage that we might have in that way; that we would give them a lease the same as they did in Pennsylvania or West Virginia allowing them one-eighth royalty on all the oil that was found in the land.

Dr. Griffith said he thought we were entitled to anything in that way, but he was afraid that the Balls would not lease; that they wanted to sell. Then I suggested "Doctor, couldn't we get an option on the land paying down \$250. and making the time six months." He said he did not know whether that could be perfected or not, but that if we paid five hundred dollars down that we might get an option on the land. He did not say for just how long—yes, sir, he said three months. We might get it for three months and I told him by all means to have the time extended for as long a time as possible. That was my main object. I told him that

291 the company did not have very much money, but that we would pay \$250 down. I then asked him whether he had a power of attorney to act for Mr. Ball. He said, "no, sir," he hadn't, but that he could get one. I told him that it was very important that he should get one if we were to deal through him. He then said, well, he would go to Meadows that afternoon and see the Balls and that we could meet him at Meadows. This occurred, I think, about the third of June if I can remember right. I said to him, "I understand there are 240 acres of land in the tract, Doctor?" He said, "yes, sir, there was about that," but they had sold off three or four acres to some individual holders and they wanted to reserve a burial lot of one acre and that would, of course, necessitate a survey before the deeds were passed. There was no mention at all made of 275 acres. The price was fixed at ten thousand dollars.

There wasn't anything at all said about the Ball tract being a natural outlet from the property of the Maryland Oil and Development Company. It was not taken into consideration at that time

or at all or any other time that I know of. I did not state, during this conversation, that I wanted this property for myself. I told Dr. Griffith that it was for the Maryland Oil and Development Co. I never mentioned the fact of subdividing the property, or even thought of it.

The only persons present at this conversation were Mr. George R. Leapley and Dr. Griffith and myself. Mr. George W. Latimer, the surveyor, was not there. I never met Mr. George W. Latimer, the surveyor, at Dr. Griffith's house.

292 It is unnecessary and would be impracticable to attempt to build a road across the Ball tract for an outlet from the Maryland Oil and Development Co., when they have good and sufficient outlets now.

Complainants' counsel objected to this testimony as to outlets.

We have three outlets in a direct line on the road as soon as you strike it. The road to Washington. These outlets are nearer to Washington than any outlet over the Ball property. They are direct. They are practically just the same. It would not be any advantage to have any outlet from the Ball tract. It would not bring you any nearer to the main road. I have been familiar with the Maryland Oil and Development Company's property at this place—the company's property at this place, ever since the lands were purchased. I have been over it hunting a number of times.

After leaving Dr. Griffith's residence where we had a conversation with him which I have just detailed, Mr. Leapley and I drove to Meadows and not finding Dr. Griffith there at four o'clock that same afternoon we drove over to Ball's place. We found a man there by the name of Ridgeley, outside of the house, and it was but a short time when Dr. Griffith came out of the house. He and I drew off to one side. Then Dr. Griffith said that the Balls would not take less than \$500 down and make the time five months, for the second payment of the money.

In reference to the time I said "Well I would have to bring  
293 the matter before the Board of Directors and see what they said about the matter, as to the paying of the \$500; that they had not authorized me to pay that sum and that instead of making it five months he could extend the time to November 7 for the option." And he said that would be perfectly satisfactory. I said if the Board of Directors accepted such a proposition, that that would give me time, the following Monday to let him know whether we would take the property or not, and if the Board of Directors would accept the proposition they would send \$500 down to him at Marlboro.

Q. Did you give him any warning? A. I asked him whether he had a power of attorney and he said he had, but did not show it to me.

Q. Did you make any warning to him respecting his nondisclosure of the fact that it would be an option on the land? A. I told him not to tell anybody that we were paying or taking an option on this land from the fact that if it was known to the public that we

would take an option on lands, that we would not be able to lease any land, and he laughed and said that that was all right. I told him not to tell anyone.

Q. What did you say to him respecting the character of the title you wanted? A. Then we discussed the title and he said that he thought Mr. Roberts would be a good one to search the records and look after the title. I told him I did not know anything about that, but I thought Mr. Roberts was a careful lawyer and would  
294 make a careful search and that all we asked was a good title and that it would have to be satisfactory, of course, to the company. He said that would be all right.

At that time we made the arrangement to send the \$500 down to him in case we concluded to take the land, that is before the following Monday. I forget how many days that would have made it, two or three. This was Thursday. After leaving Dr. Griffith respecting this business, I drove home to Washington. Then I called a meeting of the Executive Committee of the Board of Directors. That was the next morning. I reported the proposition to them. They finally agreed that they would pay \$500 down for an option on the land under the terms as agreed upon by Dr. Griffith and myself. It was again suggested that my name be used in the matter alone instead of the company's. Mr. Thomas suggested that matter, the attorney for the company.

Q. Why, what reason was given? A. That was done so that the public would only know that we were leasing lands in Prince George County, or paying such exorbitant figures for an option or buying them on an option.

Objection by Mr. Merillat to matters outside complainants presence & statement as to exorbitant prices.

By "we" I mean the company, the Maryland Oil and Development Co.

Q. Had you been buying this property for yourself what would you have given for it?

Objection as incompetent & irrelevant.

A. I would not have bought it under any circumstances.  
295 I had all the land I wanted in Prince George's Co. I would not have paid \$10 an acre for it.

Objected to on ground witness — not an expert & that it was immaterial there being no charge complainant deceived defendant in that regard.

After allowing the company to use my name, the next done in reference to sending to Marlboro to consummate the deal, was that the company did not really have but \$400 cash in the treasury and the question arose as to raising the \$500, so I said I would advance the \$100 to make up the \$500. So then my check was drawn to the order of L. A. Griffith, agent for A. W. Ball & Brother. We supposed at that time the Ball brothers owned the tract of land, and all the time up until later on. The company then drew their check to me for \$400. The \$100 was subsequently paid to me with



some other items of advance I made for rent and different matters. Yes I think that check is in evidence. The company then on the following day sent Mr. Thomas their attorney down to consummate the deal.

Q. Had you explained to Dr. Griffith or did you give Mr. Thomas any introduction to Dr. Griffith? A. I sent a letter along. I sent a letter with Mr. Thomas to Dr. Griffith.

Counsel for defendant called on complainant for production of the letter and complainants counsel responded it was one of counsel's privileges to call. Defendants counsel inquired if counsel had the letter and complainants counsel replied *as* it was obvious they did not wish to commit the witness in advance of his examination. Counsel refused to answer the inquiry.

296 Q. Doctor, did I ask you to state the contents of that letter before you were called to the stand to-day? A. No, sir.

Q. Will you please state what the contents were as far as you recollect because counsel refuse to produce it? A. I do not know nor remember just what the exact phraseology of the letter was, but I think it was simply an introduction to Dr. Griffith presenting Mr. Thomas, and I may have said my attorney to him. My recollection is that I did. I did not go down with Mr. Thomas to Dr. Griffith's, and of course I do not know what occurred between him and Dr. Griffith down to Marlboro; he was acting as attorney for the Maryland Oil and Development Co. and the matter was placed in his hands, and I had no other interest in the matter at all.

Objection by Mr. Merillat as Dr. Griffith did not know that.

I previously detailed or indicated that I had not talked or indicated that I was buying the property but that the company was buying the property, and I positively stated that it was for the Maryland Oil and Development Co. that I was getting the option.

Objection by Mr. Merillat on previous grounds.

Mr. Thomas was the attorney for the company in going down to see Dr. Griffith, and not my attorney.

Objected to by Mr. Merillat.

I did not pay Mr. Thomas anything for his services and never agreed to, as he was not employed by me, nor did he ever call  
297 on me for payment for these services.

Objected to by Mr. Merillat.

I did not see Mr. Thomas, until the next day after his return from Marlboro.

Objected to.

He brought with him a copy of this contract as prepared by himself and signed by Dr. Griffith and himself showing an option clause in it to me and stating that it was positively an option as I want that to be emphatically understood by all parties.

Objected to as being in writing.

That is the paper Mr. Thomas gave me on his return from his interview with Dr. Griffith.

Mr. E. H. THOMAS: The paper is produced and marked defendant's exhibit W. W. S. No. 5 for identification. I offer this paper in evidence.

Mr. Merillat objects to its admissibility if it in any wise differs from the other copy.

Since Mr. Thomas gave me the paper I think it has been in my possession in the safe.

I do not remember what day it was that I was called down from my office, I being very busy at the time, to the office of the Maryland Oil and Development Co. and found Mr. Roberts there with Mr. Thomas. The Oil Company's office at that time was in Rooms 101 and 102; that is down stairs on the ground floor of the Stewart Building. Mr. Thomas gave me a typewritten contract to sign. I glanced over it hurriedly and asked Mr. Thomas whether he had compared it with the contract he had brought up from Marlboro before, the one just put in evidence, being Defendant's exhibit W. W. S. No. 5. He said it was exactly the same. I looked at the option part of it and saw that it was there and it seemed all right to me.

I then turned to Mr. Roberts and said, "you understand that this matter entirely concerns the Maryland Oil and Development Co. I am only acting for them." He said "certainly, I understand that." Then I signed the contract. Then I turned and went out and went back to my office.

Objections to incompetency reserved.

This option contract, that I have spoken of as having been signed in the office of the Maryland Oil and Development Co., I left there with Mr. Thomas, and it was given to me afterwards and I placed it in my safe among the papers of the Maryland Oil and Development Co. The other original contract, marked Defendant's exhibit W. W. S. No. 5 in the handwriting of Mr. Thomas, was placed among the papers of the Maryland Oil and Development Co. in my safe. The paper I sent down to Marlboro for record was that typewritten contract that I have spoken of signed by myself.

I asked Mr. Thomas whether he had a power of attorney, I think, at that time. He said, yes sir, the power of attorney was there from Ball to Griffith. I did not see the power of attorney. My recollection is that I did not see it.

I have not the slightest recollection as to whether or not the power of attorney was a separate paper or a paper connected or joined to the typewritten paper that I signed.

299 Objection by complainant if intended to relieve defendant from liability for a paper he himself recorded.

Exhibit A. W. T. No. 4 is the typewritten paper that I signed and sent down to Marlboro.

Q. Is it in the same condition excepting the statement regarding its record now, as far as you know that it was when you sent it to

Marlboro for record? A. With the exception of this additional on the back of it, the power of attorney. I do not know anything about that. It may have been on there when it was given to me or not, I do not know. I have no recollection about that at all.

I did not write anything or add anything to the typewritten paper that I signed, nor did I take anything from the typewritten paper.

I did not alter it in anyway.

300 The check for \$1.25 for the recording of it, has already been offered in evidence.

I received a letter from Dr. Griffith respecting the taxes on this land, dated Marlboro, Maryland, September 4th, 1903. That is the date of the letter and I received it about the 5th I guess; 5th of September, 1903.

Mr. E. H. Thomas produces the letter and envelope and offers them in evidence and asks that they be marked respectively as defendant's exhibits W. W. S. Nos. 6 and 7.

Said letter is in words and figures following, towit:

UPPER MARLBORO, MD., *Sept. 4, 1903.*

Dr. W. W. Stewart, Washington, D. C.

MY DEAR SIR: According to our agreement in the Ball matter you were to pay one-half of the taxes for 1903. The amount due for taxes for 1903 is \$16.37 x 16-\$16.53. Of this amount your part is \$8.26. The taxes were collectable on and after July 1st and bear interest after that date.

Please let me hear from you at once.

Yours very truly,

L. A. GRIFFITH.

If you will send me your ch. for one-half I will settle all immediately.—G."

That was followed up by a postal card that was mailed on the 9th and I suppose received on the 10th.

Mr. Thomas offers this postal card in evidence and asks that it be marked as defendant's exhibit W. W. S. No. 8 and that it be copied in the record.

Said postal card is as follows:

(Address:) Dr. W. W. Ste-artt, Stewart Building, 6th and D Sts., N. W., Wash., D. C.

301 (Back:) MY DEAR SIR: Please let me hear from you concerning the contents of my letter.

Very truly,

L. A. GRIFFITH.

Sept. 9th, 1903.

I called the executive committee's attention to the taxes, and they authorized me to draw my personal check for that amount and at the same time they drew their own check to me for the same amount.

Mr. Thomas re-offered said checks in evidence.

(The said checks are to be found copied in the record, the check from W. W. Stewart to Dr. L. A. Griffith for \$8.25 at page 80 of the defendant's testimony; and the other check, the one from the Maryland Oil and Development Co. to Dr. W. W. Stewart for the same amount is, to be found at page 81 of the defendant's testimony).

Mr. THOMAS: Please — check drawn on the Central National Bank of Washington is to the order of Dr. W. W. Stewart for \$8.26 and signed by the Maryland Oil and Development Co. by A. F. Lucas, Secretary, and Fred Briggs, treasurer, and the same is offered in evidence likewise with the other check.

Then I received the communication from Dr. Griffith that was dated September 12th and I received it about the 13th, 1903, in answer to that.

Mr. THOMAS: I offer this letter and envelope in evidence and ask that they be marked respectively as defendant's exhibits W. W. S. Nos. 9 and 10 and ask that the letter be copied in the record.

Said letter is as follows:

UPPER MARLBORO, MD., *Sept. 12, 1903.*

DEAR DR. STEWART: Y'r letter enclosing check for \$8.25 at hand. I have paid the taxes for 1903 & find the amt. is \$16.40 so that your half is \$8.20 & I return six cents.

I am very truly, yrs.,

L. A. GRIFFITH.

302 I did not hold any conversation with Dr. Griffith on or about Oct. 15, 1903 as I was in the wilds of Maine on a hunting trip, located on or about Lake Munsungun, and did not see Dr. Griffith during that month. I heard the testimony of Dr. Griffith about a conversation that he had with me on or about the 15th of October at my dental office. I did not have any such conversation at any time with Dr. Griffith in regard to the offer of \$1000 or asking him not to agitate the matter or in regard to any part of that testimony. I did not tell him I would take the land.

Between June 5 and Oct. 1, 1903, I think Dr. Griffith called upon me several times. Made short popcalls. Just popped in and out, I being very busy at the time and not caring very much about seeing him as it did not interest me very much as I could give him nothing definite, as to what the Maryland Oil and Development Co. would do at the expiration of the option. On these popcalls he wanted to know what the company would do at the expiration of the option; whether they would be able to take it up or not. I told him I could not tell him anything about it as I did not know. It was dependent entirely upon what prospects the Oil Company had. I do not recall seeing Dr. Griffith at all in the month of October, 1903. I do not remember of seeing him at all during the month of October. I went out of the city and stayed out of the city from the 10th to the 1st of November, but I was out of the City several days before that; that is before the 10th. I returned to the City about the 1st of November, 1903. After that I received a communica-

tion from Dr. Griffith on Nov. 5, 1903. (Counsel hands witness a letter.) This is the communication I mentioned. The first one on November 5, I got two on that date of which this is the first one. I know Dr. Griffith's handwriting and that is his handwriting. (Letter offered in evidence.) Said letter is as follows (Defendant's Exhibit No. 11):

UPPER MARLBORO, MD., Nov. 5, 1903.

Dr. W. W. Stewart.

MY DEAR SIR: I will call to see you on Saturday about 10  
303 A. M. in reference to the Ball matter.

Yours very truly, L. A. GRIFFITH.

I received another communication dated the same day.

Offer the said letter in evidence (Defendant's Exhibit W. W. S. No. 12). Said letter is as follows:—

UPPER MARLBORO, MD., Nov. 5, 1903.

W. W. Stewart, Esq., Washington, D. C.

MY DEAR SIR: I wrote you this morning telling you that I would be there on Saturday, but I may be able to get there on Friday at 10 A. M.

I am, yours very truly, L. A. GRIFFITH.

I did not answer either of these letters. The next communication I received from Dr. Griffith was when he called on me on Nov. 9,—No sir, I believe I got another first. I received a communication on Nov. 7.

Letter and envelope offered in evidence marked defendant's exhibits Nos. 13 and 14.

Said letter is as follows:—

UPPER MARLBORO, MD., Nov. 7, 1903.

W. W. Stewart, Esq., Washington, D. C.

MY DEAR SIR: I intended to be there to-day, but am unable to come. I met with an accident and so hurt my foot that I can wear no shoe. I may be able to get there on Monday but will let you know. If you prefer you can drive over to-day, or if not, I will telegraph to you Monday early, and if I cannot get there, you can take the 9:30 train here or drive here. I am sorry not to be able to get there, for I am anxious to close up the matter at the earliest date. If I cannot get there I may send Mr. Roberts, if you cannot come.

Yours very truly, L. A. GRIFFITH.

304

WASHINGTON, D. C., December 13, 1904.

*Testimony of W. W. Stewart.*

By Mr. E. H. THOMAS:

I want to make some corrections as to my previous testimony. I have here in my testimony that the Maryland Oil and Development

Co. was incorporated from Feb. It was July instead of February. That is on page 185. Here in my testimony at page 194, I say: "I told him I did not know anything about that, but I thought Mr. Roberts was a careful—would make a careful search." In the blank space I want to insert the word- "lawyer and."

On page 195, I want to insert the word "again" for "then," reading: "It was again suggested that my name be used in the matter alone instead of the company's." Now, in the next answer on the same page I want to insert the word "only" and the words "and not" so that this answer will read properly:—"That was done so that the public would only know that we were leasing land in *in* Prince George's County and not paying such exorbitant figures for an option or buying them on an option."

Mr. MERILLAT: I produce as called for by the defendant certified copies of papers in the Office of the Register of Wills of Prince George's County and also the letter whereby Dr. Stewart introduced Mr. Thomas to Dr. Griffith.

Mr. THOMAS: I offer this letter in evidence. I also offer in evidence, the certified copies of inventories of the real and personal estate produced by counsel.

Mr. MERILLAT: I suggest that that letter be incorporated in the record, but these certified copies need not.

Mr. THOMAS: All right. That is understood.

Said letter is offered in evidence by the defendant and is marked defendant's exhibit W. W. S. No. 15 and is in words and  
305 figures following, to-wit:—

Wm. W. Stewart, Att'y at Law, etc.

Dr. L. A. Griffith, Upper Marlboro, Md.

DEAR SIR: I am obliged to go out of the city to-day and I herewith send my attorney, Mr. A. W. Thomas with my certified check for \$500 to complete purchase as agreed upon with you yesterday for the Ball tract, balance of payments to be made according to understanding had with you.

W. W. STEWART.

Mr. THOMAS: I want to make a correction as to my offer in evidence of the inventory of the real estate. I offer in evidence all that part of the certified copy except this statement "A subsequent survey of the above mentioned real estate having been made disclosing the fact that instead of 240 acres of land in the tract near Centerville, the survey showed it to be 288 $\frac{1}{2}$  acres—the same having been so reported to this court by the executor L. A. Griffith."

This latter statement I am informed and expect to show was not on the original appraisement, but has been added since.

Likewise referring to the inventory of personal estate, an exemplified copy of which has been furnished me by counsel, I desire to offer all of the same except the last item as follows: "Cash in Bank at Laurel, \$300." which I expect to show was not on the inventory.



Said exemplified copy is marked for identification as defendant's exhibits respectively, W. W. S. Nos. 19 and 20.

Concerning when my name was first suggested and by whom as the means of conduit for taking title or making an agreement for this property, the matter was freely discussed by the executive committee as soon as there were some doubts about our acquiring the Ball tract by lease.

Objected to by Mr. Merillat.

The excuse made by Dr. Griffith when he came out of the Ball house, for not extending the time for the first payment of six months and in making it five months was that Ball was dependent upon wood and stuff that he cut off of the place, for a living.

He said that the Balls did not want to make the time six months but would make it five months because they cut a little wood off the place and the wood cutting time commences about Nov. 1, and they wanted (and I say we because we supposed it was the Ball brothers) to be ready in case we did not take the land at the expiration of the option. That if we did not take the land at the expiration of the option, the 7th of Nov.—at the expiration of the five months which was the 7th of November, they would send men in and have their wood cut.

The season for cutting wood closes in the spring and it commences about the 1st of November. They do all of their wood cutting in the winter months when the men are not busy on their farms making the crop. You very rarely see any one cutting cord wood in the summer time and that was all the Balls had on that tract, a little bit of cord wood and not much of that.

Objected to.

By Mr. THOMAS: The typewritten paper which has been put in evidence marked exhibit A. W. T. No. 4, provides that L. A. Griffith, as agent and duly authorized attorney of the said Alfred Ball, hereby grants bargains, and sells, and agrees to convey by proper deed or deeds of conveyance in fee simple free and clear of all liens and incumbrances of every kind and nature, duly executed by the said Ball to the said Stewart, the said 240 acres of land, upon further payments and conditions hereinafter named, to wit: the balance of one-half of the purchase price of the said 240 acres more or less at the rate of \$40 per acre is to be paid to the party of the first part on the 7th day of November 1903. (I am omitting other parts of the contract.) It is further provided that the said land is to be surveyed and a plat made therefor, and the total purchase price is to be at the rate of \$40 per acre as determined by the said survey, etc. and that proper deed or deeds of conveyance and abstracts of title of the said land based upon title search thereof is to be made by J. K. Roberts Attorney, Upper Marlboro, Md., showing clear and unencumbered fee simple title in the said Alfred W. Ball etc. In case the remainder of the first half of the purchase price be not paid on November 7th 1903, then the said \$500 so paid to the said Griffith, is to be forfeited and the contract of sale and conveyance to be null and void." What I desire to know from you is whether

there was any survey or deed tendered to you executed and acknowledged by Alfred W. Ball, or any other person on the 7th day of November 1903.

308     Objected to on the ground Stewart had requested matter be deferred.

There was no survey or deed tendered to me executed and acknowledged by Alfred W. Ball, or any other person, on the 7th day of November 1903. There was no survey or deed tendered to me prior to the 7th day of November, 1903, by Alfred W. Ball or any other person.

Although it has been stated by counsel in objecting to this evidence that I waived the performance of this contract by Alfred W. Ball and the complainant prior to the 7th day of November, 1903, I will state that I did not waive it in any way, shape or form, or in any correspondence or in any way.

Dr. Griffith did not call on me on the 7th day of November, 1903. Instead of that he wrote me a letter dated the 7th day of November 1903, which was offered in evidence at the last session, being defendant's exhibit W. W. S. No. 14. I did not make any answer to this letter being defendant's exhibit W. W. S. No. 14.

The first time Dr. Griffith called on me after Nov. 7th, 1903, was on Nov. 9th. At that interview he asked me what we were going to do about the Ball matter. I said, "have you a deed?" He said "no sir." I said, "What is the matter with your man in Prince George's county?" "Oh" he said, "he is dead. I am executor under the will." "Well," I said, "don't you think that the death of Ball complicates matters?" "No, sir," he said "I don't think so." I said, I thought it did, but as it was a matter of the Maryland Oil and

Development Company's alone and that I had no interest  
309     in it that I would present the matter to the Maryland Oil and Development Co. and they could take any action they chose. I advised him to declare a forfeiture. I said "You can take any such steps you please in the matter. You have that right." "Well," he said, he would like us to have the property and then after a desultory conversation he left.

He did not have a survey with him or offer me any survey. I learned that Ball was dead, on Saturday evening. Saturday was the 7th of November.

Griffith's letter dated November 7, 1903, being defendant's exhibit W. W. S. No. 14 came by special delivery and I think I received it November 7th.

The news of Ball's death was brought to me from one of the farmers down in that section of the country on Saturday November 7th—he told me that Ball had died Nov. 5th, a couple of days before.

Objected to.

Dr. Griffith did not tell me by correspondence or by word of mouth that Ball was dead before I made inquiry of him. I don't think he would have mentioned it at all if I had not asked him.

Mr. Merillat moved to strike out the statement.

Q. Dr. Griffith has made a statement at page 46 that he called to

see me between the 7th and 15th of November, after the death of Ball and that I said to him, "You know I purchased this property for the Oil Company." And that Dr. Griffith said to me, "I don't know anything of the kind." To which I replied, "Yes, sir, I did buy it for the Oil Co.," and that he replied to me, "I have nothing to do with the Oil company, but look to you exclusively."

310 And that I said to Dr. Griffith, "Well you go ahead and let them forfeit their \$500. Go ahead and sell the property if they don't meet their obligations and let them forfeit their \$500" To which Dr. Griffith states he replied "I have nothing to do with the Oil Company, but will deal with you exclusively, Dr. Stewart." A. The only conversation I had with Dr. Griffith between the 7th and 15th of November was on the 9th of November and the conversation was as I have just stated. I told him that it was a matter that concerned the Maryland Oil and Development Co. alone and that I had no interest in it whatever and that he could take whatever steps he chose and I advised him to declare a forfeiture and I think I added those words, that if they did not come up or pay the money down to declare a forfeiture.

He did not make any statement to me at that conversation to the effect that he had nothing to do with the oil company, but looked to me exclusively. The conversation between Dr. Griffith and I on the 9th of November, 1903, was a very short one, from the fact that I was very busy and had a patient in the office. That conversation occurred in my dental office.

It did not occur in the office of the Maryland Oil and Development Co. No one was with Dr. Griffith at that time. Next I heard from Dr. Griffith by letter that was dated November 10th. I do not remember when I received this letter from Dr. Griffith. It must have been on the 11th. I haven't got the envelope.

311 Objected to.

Letter offered in evidence marked defendants exhibit W. W. S. No. 16 and is in words and figures following, to-wit:

UPPER MARLBORO, MD., Nov. 10th, 1903.

W. W. Stewart, Esq., Washington, D. C.

DEAR SIR: I have consulted two lawyers and am satisfied that I am fully authorized and empowered to complete sale of land and give deed. It rests with you. Please let me know positively on or before Monday next (16th) what you intend to do. There is a proposition on hand from other sources and I have under this will power to act. I will make private arrangements at once for the disposition of it, if you do not take it. If you do not meet the requirements and satisfactory arrangements are not made before Monday 16th at 12 o'clock please consider the matter ended. I think you entitled to the property and I desire that you shall get it, but I must do for the best interests of the estate, and I will gladly wait for you until Monday 16th.

Y'rs very truly,

L. A. GRIFFITH.

I have arranged to have the property surveyed at an early date. This is necessary in either case.—G.

Complainant's counsel objected that the letter was irrelevant & that as matters then stood Dr. Griffith could take no action  
312 except by order of the Court and was not yet executor & had ceased as agent.

I did not take any authoritative action to meet what Dr. Griffith calls the "arrangements and requirements before Monday the 16th at twelve o'clock at which time the matter was to be ended," between November 10th and 16th. I considered the matter as finally and fully ended.

Objected to.

At the time that Dr. Griffith called on me on November 9th, and at the time that I received this letter dated November 10th, I did not have any pecuniary interest whatever in the contract for the purchase and sale of this land, except so far as I was concerned as an officer of the Maryland Oil and Development Co.

Objected to as incompetent, irrelevant & immaterial.

I did not see Dr. Griffith after the 9th and up until the 17th of November, 1903 or later on. I did not have any communication with him, and of course took no steps, made no new agreement or contract or acquiescence in any new terms or conditions whereby, after the death of Ball or after Nov. 7th, 1903, or after Nov. 9th, 1903, or Nov. 10th, 1903, and between that and Nov. 16th, 1903 at twelve o'clock whereby I acquired or was to acquire or agreed to acquire any interest in this land, whatever.

Objected to as incompetent & irrelevant.

When I received this letter of November 10th, 1903, addressed to me by Dr. Griffith, I considered the matter as finally and  
313 fully ended especially after the Maryland Oil and Development Co. did not put up any money on the 16th, which I knew they would not. Therefore I felt very much elated that the matter was settled.

Sometime between the 17th of November, 1903 and the 22nd of November, Mr. Roberts called on Mr. Thomas and showed him—I was up there. He called on him first. I was not there when he first called on Mr. Thomas; I found him there. Dr. Griffith was not there. I did not have any interviews with Dr. Griffith subsequent to November. My last interview with Dr. Griffith in reference to this matter was sometime in January. December 8th was the next visit I had. After my talk with Dr. Griffith on Nov. 9, 1903, my next visit from him was on Dec. 8th. I had intermediately, that is between the 16th of November and the 8th of December, been written to — Dr. Griffith.

MR. THOMAS: I ask counsel on the other side to produce a letter dated November 23rd, 1903, from Dr. Stewart to Dr. Griffith, if he has it. I produce a copy of this letter and subject to the production of the original, I offer it in evidence.

Said letter is marked defendant's exhibit W. W. S. No. 17 and is in words and figures following:

Nov. 23, 1903.

Dr. L. A. Griffith, Upper Marlboro, Md.

DEAR SIR: In reference to the order of the Orphans' Court of the 17th inst., in the matter of the estate of Alfred W. Ball, deceased, which I have received from you, I would say that the agreement regarding the land in question was entered into for and on behalf of the *Maryland Oil and Development Company* and upon cash deposit of \$500 furnished by said company.

It was understood by all parties concerned at the time the agreement was executed, that my name was used merely as a matter of convenience for the company.

I am advised by the company that the death of Mr. Ball renders further steps to be taken to complete and pass title to the land, and, of course, the Agreement remains to be consummated between you and that Company. I have no personal interest in the same, except as above indicated, and do not assume any personal liability regarding it. Trusting you will adjust the matter with the Company in due time, I am,

Yours very truly,

WM. W. STEWART.

That letter which I produced is a copy of the letter which I sent to Dr. Griffith on November 23rd, 1903. I sent this letter by mail.

I first heard of the order of the court of November 17th, referred to in this letter of November 23rd, 1903, when it was brought to Mr. Thomas' office. That is, the office of the Maryland Oil and Development Company during the interim between the 17th and 22nd of November. I could not tell you just the exact date. It was brought there by Mr. Roberts. I don't think I saw the order. Mr. Thomas spoke about it to me. I think I was there at the time Mr. Thomas received the order. I am sure I was there. Mr. Thomas and Mr. Roberts were present.

I know that Dr. Griffith received my letter of the 23rd of November, 1903, because I received an answer to it dated November 24th. That is the answer (Witness hands counsel a letter).

I produce this answer in evidence. Said letter is marked for identification defendant's exhibit W. W. S. No. 18 and is in words and figures, following:—

UPPER MARLBORO, MD., Nov. 24, 1903.

W. W. Stewart, Esq., Washington, D. C.

DEAR SIR: Your letter at hand. I know nothing about any company. My business was with you and I *shall deal with you*. You stated that this was your private enterprise and I have all the proof to that effect that I desire. I shall deal with you.

Y'rs truly,

L. A. GRIFFITH.

Dr. Griffith knew my name was to be used in this contract because I positively stated to Dr. Griffith at the Ball farm that the reason I allowed my name to be used was from the fact that if it were known that we were taking options or paying high prices for options on land,

316 that we would not be able to lease an acre of land in Prince George's county.

Objected to.

I wanted as long a time as possible from the fact that we were drilling an oil well in Prince George's County and were about to change our system to a rotary system and naturally we wanted as long a time as possible so that we could get our well drilled and strike oil or not, whichever might occur, before the expiration of the option. If we struck oil we naturally were willing to pay any price for the land. If we did not strike oil we would forfeit our five hundred dollars and the whole deal would be off.

Objected to.

Dr. Griffith's reasons for not making out the time option six months as I had first requested, were he stated that the Balls said they did not want to give six months' time and were only satisfied to give five months from the fact that they were going to cut off some wood; that is, cord wood, and generally commence the cutting about the first of November. If we did not take the land at the expiration of the option clause, then they could make their arrangement for the cutting of the wood. The meaning of the postscript of Dr. Griffith's letter dated Nov. 10, 1903, which states "I have arranged to have the property surveyed at an early date. This is necessary in either case," is that Dr. Griffith knew that it was an option and he also was authorized by the will to sell the land. That if we did not take the land at the expiration of our option, or at this time, at the time he said there Nov. 16, he would sell it any how to the other party  
317 and the survey would be necessary in either case.

Objected to.

In the letter he said "in either case" because it was purely optional to us. If we did not take the land on the 16th of November, he was going ahead anyhow and make a survey with a result that if we did not take it he would have it ready for the next purchaser.

Objected to.

This letter was written subsequently to my talk with him on Nov. 9, during which I had talked forfeiture of the option. This letter followed on the 10th. He wrote it on the 10th.

I have spoken about Mr. Roberts making a call on Mr. Thomas and bringing the order of the Orphans' Court in Prince George's County, which has been offered in evidence, I believe, but I did not have any conversation or make any inducement to Mr. Roberts or Dr. Griffith subsequent to the letter of Nov. 10 and my conversation with Dr. Griffith on Nov. 9, whereby he was to send up by Mr. Roberts or Mr. Roberts was to bring an order of the Orphans' Court. The first I knew of the Orphans' Court or the first connection of the Orphans' Court was when Mr. Roberts brought it there. It took me entirely by surprise. I had not authorized Mr. Thomas to request Mr. Roberts to bring up any such order of the Orphans' Court.



Objected to on the ground the law fixed the duty & the proper course to pursue.

I don't remember of ever having any conversation when I  
318 met him in the office of Mr. Thomas subsequently to Nov. 17th and between Nov. 17 and Nov. 22, 1903. Mr. Thomas did all the talking. I was taken by surprise, and put out, that they were trying to revive the matter again.

Motion to strike out.

Between Nov. 9th and the production of this order to Mr. Thomas, the secretary of the Maryland Oil and Development Co., I showed the letters to Mr. Thomas, the attorney for the company, and the matter was dropped at that. There was nothing more done. There was nothing more said about it. When Mr. Roberts produced this order of the Orphans' Court between the 17th and 22nd of November, I notified Mr. Thomas and the executive committee that I did not like the way things were going on; that it placed me in a very embarrassing position; that I was between the oil company standing "pat" and Dr. Griffith on the other side; that I proposed to write a letter to Dr. Griffith notifying him again that I had no interest in the matter whatever and would assume no liability or responsibility, which I did on the 23rd of November.

Objected to.

I could not help Dr. Griffith writing these letters and I could not prevent Mr. Thomas from demanding title. I was in between as you might say and it was a very unpleasant position for me and of course, I knew that the assertions that Dr. Griffith made were entirely wrong so I simply made up my mind to have nothing further to do with any of them and let them fight it out among themselves.

Complainant moved to strike out.

The next move by Dr. Griffith was on December 8th as  
319 I was on the second story of my building, I was called by Dr. Griffith and Mr. Ambrose, asking me to step over to the elevator in which they were. They said they wanted to see me and I asked the elevator boy to carry me up to the third floor and ushered them into the Maryland — and Development Company's office. As soon as I got in the office one of them handed me a paper which I immediately passed over to Mr. Thomas, the attorney for the oil company, telling them that I had nothing to do with the matter whatever; that it was a matter that concerned the Maryland Oil and Development Company. Mr. Thomas told them that it was certainly a matter for the Maryland Oil and Development Company; that they had furnished the money (\$500) and that he was the attorney for the company and that I was the nominal purchaser only.

Mr. Ambrose said he did not care and then and there was a discussion as to the title. Mr. Thomas said the title was insufficient and they had quite a discussion about the title. By "they," I mean Mr. Ambrose and Mr. Thomas. About the number of acres Mr. Ambrose said there is 288 acres in the tract and that was the first

time I ever heard anything about there being more than 240 acres. I had no conversation at all. I did not say another word after that with Dr. Griffith or Mr. Ambrose. I was too mad to express what I felt. I did not join in this discussion about the title. On page 93 of Mr. Ambrose's testimony, where he says he was unable to satisfy Mr. Thomas, and that I was amenable to reason, I did not say anything at all. I suppose he thought from my silence that I was very amenable, but I was not.

About the statement that Dr. Griffith and Mr. Ambrose  
320 and myself went out in the hall-way together as Mr. Ambrose testified in his testimony at page 94, I have to say that I did not go out in the hall-way with Mr. Ambrose and Dr. Griffith. When Mr. Ambrose states on page 94 that I desired Mr. Roberts to continue the work that he had done; that I was satisfied with the abstract that was prepared by Mr. Roberts and desired such points as raised by my attorney to be cured and that Mr. Roberts should proceed to cure them, I want to say that I did not say anything to either of the gentlemen about Mr. Roberts or anything about it. Where on page 95 of his testimony Mr. Ambrose said "I asked Dr. Stewart whether or not he desired to carry out the contract if a good title could be had to the property and he stated most emphatically that he had no other end in view than the perfecting of this title, and the taking to himself this land," I just as emphatically say that was no such conversation.

Where Mr. Ambrose further states on page 95 of his testimony "I then asked him if he wished to drop the matter and let the \$500 that he had paid go. He stated that he did not; that he wanted the land; that he had arranged to buy it and would be disappointed if anything happened by which he would fail to get it." I did not have any such conversation; nor would I have said any such thing.

Motion to strike out "Nor would I have said any such thing."

On page 96 in Mr. Ambrose's testimony he says "In the hall-way when we were about to part and after the conversation respecting

Mr. Roberts I stated to Dr. Stewart that we did not want to  
321 go on with this matter unless he proposed to adhere to the terms of the contract and complete the purchase, and that if he proposed to suffer a forfeiture we wanted to know it then and there. He stated that he had no such purpose in view and that if he had had he certainly would not have gone into this question of title so closely; that the matter would be a closed one and that he would have no further interest in the transaction, and that the delay occasioned by the death of Mr. Ball and by such defects as his attorney considered existed would in no wise be taken advantage of by him."

In reference to that statement I say in the first place I did not go out in the hall-way with either Dr. Griffith or Mr. Ambrose, and further, I did not have any such conversation with either of them.

WASHINGTON, D. C., *Saturday, at 10:30 a. m.—Dec. 17, 1904.*

WM. W. STEWART.

By Mr. E. H. THOMAS:

Q. Dr. Griffith said something on page 41 of his testimony about the matter of the payment of taxes. In response to a question which was asked him about what conversation he had and what agreement he had as to the payment of taxes, he answered: "I told Dr. Stewart that as Mr. Ball could not cut a stick of wood off of the place; it was his place; he bought it, and as Ball could not rent it and could not cut any crops from it, and that Mr. Ball and myself stood ready at any time to complete this sale, that he would have to pay  
322 the taxes on the property for the remaining part of the year from that time on and he agreed to it and sent me a check for the payment of the taxes for the balance of the year, which was one-half of the year." Can you recollect any such conversation with Dr. Griffith, and if so state what it was?

In reply I state that I never had any such conversation with Dr. Griffith in regard to the taxes. The only communication that I received from him were the letters that have been presented in evidence here and the postal card. In reply to the question why I paid the taxes mentioned in the letters and postal card I have to say that I called Mr. Thomas' attention to it, the attorney for the Maryland Oil and Development Company, and he said: "Well, it will only be a trifling amount and we don't know whether we will take the property or not, so you better pay the taxes and draw your check for it and we will pay you for it."

Objected to.

Q. On page 57 of Dr. Griffith's testimony he was asked this question: "What, if anything, can you say as to a warranty deed at any time being tendered to Dr. Stewart?" And he made answer: "When Dr. Stewart made objection to this on the ground that the title was not good I told him I thought I was worth as much property as was involved there and I would give him a warranty deed, or guarantee the title and make myself responsible for it." What do you know about any such conversation as that?

A. In reply to this I say that there was no such conversation.  
323

Q. On page 58 Dr. Griffith in his testimony was asked the following question: What occurred at that time when you called in company with myself? (Meaning Mr. Merillat and Mr. Ambrose) He answered as follows: "We went in and tendered all of these papers and this deed and mortgage and also to have—but Dr. Stewart became angry. He declined to carry it out and said 'Let me send for my lawyer, Mr. Thomas,' and he went out and got Mr. Thomas. What I want to know from you is, what were the real facts respecting this interview and when it occurred? In reply I think it was sometime in January 1904. Mr. Merillat and Mr. Ambrose and Dr. Griffith came into my office. I immediately arose

and said I would go out and get a witness. Mr. Merillat said that was all right. I told him I did not want to hold any conversation without someone being present and I immediately went upstairs and called down Mr. Thomas, the attorney for the Maryland Oil and Development Company, and he came in. I was very angry and spoke to Dr. Griffith and told him what I thought of his actions. I don't think it is necessary to repeat what was said. I know I did not use the expression "my attorney."

From the time of the annual meeting of the stockholders in July until November, 1903, I was not president of the Maryland Oil and Development Co. That annual meeting of the stockholders was sometime in July. I cannot give you the dates unless I refer to the books. I was not president of the Maryland Oil and Development Co. on Nov. 7, the time which it is claimed on my part 324 that the option on the Ball tract of land expired. At that time I was acting as Vice-president. I am still Vice-president of the company. I have not been president of the Maryland Oil and Development Co. since the annual meeting of the stockholders in the month of July, 1903.

Q. In the contract, which has been offered in evidence, it appears that the price of the land per acre is mentioned at forty dollars. You have stated that the amount to be paid for the property was spoken of as \$10,000, or spoken of as the price to be paid for the property. How did that change come to be made? A. In the conversation held between Dr. Griffith and myself at the Ball house the number of acres was discussed, and there was a reservation of one acre for a burial lot and three or four acres that had been sold off the tract. So then we could not arrive at any figure and Dr. Griffith suggested \$40 an acre which I accepted.

Q. Did you ever take possession of this land or exercise control over it? A. I did not.

In reference to the testimony of Vincent Richardson at page 170, where he says that I came down there to hunt sometime in November after the death of Ball and that he said to me "Doctor, Dr. Griffith has left me here to take charge of the place and asked me not to let anyone hunt on it." The Doctor laughed and said 'Well, a fellow has got a right to hunt on his own place.' The Doctor looked at me and smiled."

I say that I was invited by the boy on the farm there, that is, on the Maryland Oil and Development Company's farm, to go across and see this Richardson boy to have 325 the privilege of hunting on the place. We crossed over and did some little shooting until we met the Richardson boy. He made the statement as to Dr. Griffith having notified him and I said that we had paid \$500 down on that place and had never gotten anything off, and I thought a couple of birds would not hurt and laughed. That was the only conversation that occurred."

I never went on the land there in Ball's lifetime nor interfered with his possession or control over it in any way.

I was present at the taking of the deposition of Mr. Latimer, Sr., at the Garfield Hospital.

I never saw Mr. Latimer to know him before that time. I did

not have to my knowledge any conversation with him prior to that time—prior to seeing him in the Garfield Hospital.

I did not meet him at Dr. Griffith's house when I went down there. I never met him at or near Marlboro or in Prince George's County, Maryland.

On the day that we took Mr. Latimer's testimony, his physical condition seemed very feeble.

Q. Do you recollect any conversation with Dr. Griffith respecting any proposition of his about how the Maryland Oil and Development Co. could pay for this property? A. I think on one of his calls prior to October 1st, that is between June 5th and October 1st, 1903, one of those calls that I classed as "pop" calls, he suggested to me that the Maryland Oil and Development Co. could sell a  
326 little more stock and buy the place; that there would be no trouble for you folks to sell the stock and buy the place. I told him that there were certain obligations imposed upon us that would prevent us from doing anything like that, buying additional land, unless there was real cause for it; that I would not even suggest the matter to the Company.

Session of Saturday Dec. 17, 1904, Continued.

*Testimony of Dr. W. W. Stewart.*

Cross-examination.

By Mr. MERILLAT:

I am about five feet eleven inches tall, and of slender build comparatively. Mr. A. W. Thomas, our attorney, is about five feet and something—six, I guess—short and heavy. Yes, sir, our appearances are wholly dissimilar, and I don't think it is possible for a man to mistake us, unless he is not in his sound mind.

As to what was the apparent condition of Mr. Latimer's mind when I was at the hospital, as to its clearness (irrespective of this one matter of identification) I say that he seemed to be very feeble. I would not like to pass on his mentality. He seemed to be all right with the exception of identification. I could not name approximately the date of this "pop" call when I saw Dr. Griffith, and he suggested that the Maryland Oil and Development Co. should sell stock and complete it. I am positive that this conversation was with Griffith.

At this interview in January when you (Mr. Merillat) were  
327 there, yes sir the first thing you did was to state that you were there to make a formal tender of all the necessary papers in connection with the transfer and sale of this land. Yes sir, I declined the tender. Well, I simply said I would not have anything to do with the matter unless I had a witness present. There were three of you gentlemen present and I would not do anything unless I called a witness and I would not say a word.

At any rate at that conversation I positively declined to have anything to do with the matter whatever, and charged Dr. Griffith

with treating me unfairly and we had a heated argument in regard to it; he affirming, or I affirming on the one hand, and he denying on the other.

Our statements were diametrically opposite to each other, as to what had occurred, and I might state exactly what he did, if that is wanted. I charged him with having known that it was a matter of the Maryland Oil and Development Co. and that he had gone down there unknowing to me and attached all my land in Prince George's County without ever giving me a word of notice and that he had not acted as a gentleman. We had quite a heated argument. He at that time denied absolutely of ever having had any dealings with the Maryland Oil and Development Co. and asserted that all his dealings were with me personally.

As to the other remarks he denied them and I affirmed them.

GRIFFITH

v.

STEWART.

WASHINGTON, D. C., December 23, 1904.

*Testimony of Dr. W. W. Stewart.*

Cross-examination continued:

328 I want to correct my evidence and fix the date of the meeting between Mr. Merillat and Mr. Ambrose and Dr. Griffith and myself, called the last meeting. It was on February 15th instead of January, the day the suit was filed. February 15th, 1904.

By Mr. MERILLAT: I hand herewith the original of Dr. Stewart's letter of November 23rd, 1903 and if it agrees with the copy in the record the copy can be considered as the original. I also have here a sworn statement from the cashier of the Citizens' National Bank of Laurel with respect to the \$300 item in the bank book. As it seems to be rather an immaterial feature, we submit that that sworn statement ought to be sufficient, but if it is desired that we should go to the expense we will have the cashier here to prove it.

Counsel agree to let that matter go until a later time.

I do not think I ever met Mr. Latimer, the surveyor who testified, prior to the first of July, 1903. I may have, but I am not sure. I have never to my recollection had any dealings with him with reference to surveys of any sort. In answer to question as to what lands witness had purchased near the neighborhood of the oil well and oil property near Centerville, he said: In 1901 I purchased the Dr. Richardson tract, the E. G. Wilson tract, and Berry tract of land.

Objected to by Mr. Thomas.

329 There is a road intervening between the Berry tract and the Ball tract. The Richardson tract lies some distance away and also the Wilson tract, in an opposite direction from the oil company—all of the tracts lying in an opposite direction from the oil company—from the Ball tract. I do not know whether it is



east, west, north or south. It is all on one side of the oil company. My ground is farther from the oil company's land than the Ball land. The Ball land intervenes. The Berry tract consisted of 74 acres of land with two buildings on it and one new building; peach orchard and acres of raspberries. Something like 40 acres under cultivation; that is, tillable land and the rest of it is woodland.

Mr. Merillat moves to strike out part of the above.

The Richardson tract is 139 acres and some tenths acres and cost me less than \$20. Somewhere between \$19 and \$20 an acre. I have not figured it out. That tract was bought about the same time, 1901, and the E. G. Wilson tract of 168 acres;—that was bought for about \$20 an acre in 1901. For the Berry tract I paid about \$2200 for 74 acres, which is approximately about \$30 an acre. That was bought in 1901, I think. All bought that year, I think, or about one time. I don't know exactly.

There is a straight road leading from the Berry tract and passes the Ball tract to the oil land. I would not be able to say whether or not the Ball tract is directly between the oil tract and the Berry tract, from the fact that there are a thousand acres of the Maryland Oil and Development Company and there are only 240 acres of the Ball tract, or supposed to be.

There is a narrow strip of the Ball tract that runs down to this road. A narrow strip. You can drive right from the corner  
330 of the Berry farm or from the house, you might say, and go straight to the Ball—pass the Ball lands and pass this strip and right on the Maryland Oil and Development Company's land and drive across the Maryland Oil and Development Company's lands to the oil well.

If we had a road cut across the Ball tract, we would not save more than a quarter of a mile in going to and from the Berry property to the oil well.

The Ball property is not between both the Wilson and the Richardson properties and the oil well. Yes sir, all three of those properties, Berry, Richardson and Wilson, are nearer Washington than the Ball property. I do not know whether the oil property is north or south of the Ball property. But the Oil property is farther from Washington than the Ball property. It is a fact that the Ball property is an intermediate property between these other three that I own and the oil property.

That house on the Berry property I should say cost about \$400 to be built. I do not know exactly. I would not want to be put on the stand as an expert on the matter. I would not doubt a bit that prior to the oil excitement, Berry paid only \$10 an acre for the Berry farm.

Q. As a result of the oil excitement did you not have to pay Berry treble that price? A. I want to state positively right here that there was no oil excitement when I bought those properties, including the Berry property. That is, I want to note that there was no known excitement. Nobody knew of it. It was all under cover.  
331 We knew it ourselves. I bought those three properties because I thought I might sell them sometime at an increase in value.

I bought them with respect to some subsequent oil excitement; we were going to drill there for oil. I was in hopes that we would strike oil and if we did it would be valuable; be valuable from the fact that there was oil there. It would certainly be more valuable than if there was not oil.

Prior to the purchase of these properties I had not bought the oil farm. Mr. Lendner and Mr. Briggs owned it prior to that time and they had secured about a thousand acres of land there, including that tract—a very good tract.

Lendner and Briggs, prior to my making these three purchases, had discovered some signs of oil on their own farm and they secured adjacent tracts, making a thousand acres of land, with the expectation of organizing some company and drilling the territory and I expect of getting rich. When I bought these three farms, I did not know that Lendner and Briggs were going to drill for oil. I knew that a well would be driven for oil; I expected that the property would be developed.

You ask: "And you were willing to pay \$30 per acre for the Berry tract because of what prospective value you thought it would have once it became known that there would be drilling for oil."

It is rather difficult to answer that question unless I would say no emphatically and yes. I expected they would discover oil on the Maryland Oil and Development Company's tract and if they did that would enhance the value of the Berry tract and also  
332 took into consideration the representation made to me as to the farm being a good one, etc.

These purchases were made before there had been any work on the oil well started. I was not associated in any way in the purchase of the oil well tract proper.

I subsequently became interested after Mr. Briggs and Mr. Lendner had gotten to a thousand acres of land. They were short of money and they had to keep up these options they had on the lands and I loaned them some money. I could not give you the exact date when this was. It was after they made their purchases—some time after, and it was prior to my making my purchases of the three tracts. Lendner and Briggs may have bought the lands. I won't say option positively, but then it was they had additional moneys to put up on their purchases or options, whatever it was. I did not bother my head with their matter and in fact I don't know much about it. It may be or it may not be a fact that what they got was money to complete their purchases. I do not know. I am not a mind reader, and cannot answer your question as to whether I expected to find oil on the Berry farm. At the time I made the purchases I did not expect it. I hoped there would be oil found on the oil tract proper and I invested more money than I ought to have on that prospect. From the indications we had various hopes as well as despairs. No sir, it was not particularly my expectation that if the result was successful I could utilize the one or more of these three tracts in making a town.

I expected its enhancement to come from the fact that if oil was

333 discovered on the Maryland Oil and Development Company's land, the whole country there would enhance in value. All the lands, not only the Berry tract.

Q. When did you cease boring for oil or the company?

A. When the contractor finished his contract.

Q. I asked for the date.

A. I could not give you the date sir.

Q. Was it not in January 1904?

A. I could not give you a positive answer as to whether it was in January, 1904, because I paid so little attention to it at that time. You ask whether or not it is correct that in the Autumn of 1903 I had strong hopes of striking oil and believed that our only difficulties were mechanical; in other words, that oil was there, but that owing to the nature of things we needed machinery different from that which was used in other fields to get at the deposit of oil,—My reply is no.

Question objected to by Mr. Thomas.

As to the main question, I stand on no for an answer, but the question is too ambiguous, Mr. Merillat, and I cannot answer it. In the Autumn of 1903, one day I believed one thing and the next day I believed the other thing. It is impossible to tell you exactly what I did believe. I was up in the air on one day and down in the depths of despair the next day. There was not any certainty about it. That state of mind continued up to the month of December, 1903,—including the month of December.

No, sir, I have never been a developer or boomer of industrial enterprises in western towns. I have had considerable experience as a builder in real estate. I built a brewery once in my life  
334 I have helped to organize building associations; boomed the town. The town is in a first class condition to-day. My enterprises have been successful thus far, with the exception of the Maryland Oil Development Company. That has not panned out as we expected it, but still have hopes. I may say that I built the Stewart Building in Washington here.

This Ball tract is immediately next to the oil tract proper. The Maryland Oil and Development Co. has leases of land immediately adjoining the oil tract proper. They have or did have. They had the Nellie Leapley farm of 125 acres; the Wallace heirs, 311 acres. We have quite a number of leases in the vicinity. Some of them may not border immediately on the thousand acres, but they are scattered all around here. If I am allowed to refresh my memory I can give you the exact data.

Those leases of farms adjoining the oil tract proper are not on the opposite side from Washington. That is, they were not. There may have been some of them forfeited this year. I have no leases in Prince George's County.

If you mean to ask me the name of any lease that the oil company has on the Washington side of the oil tract and adjoining that tract, as of date, I would not be able to tell what leases are forfeited and what are not, you understand. We had the M. E. Suit; we

had the Tolson, and we had another Suit. Yes, as you say, the Suit and the Tolson tracts are some distance from the oil farm: The

335 Maryland Oil and Development Company owned very nearly all of the land on the other side of the road leading from Centerville to Red's corner. The Ball tract lay between the Maryland Oil and Development Company's tract and the road. There are some farms in between; small tracts that we could not lease and therefore did not bother with them after we found we could not lease them.

In June 1903 the Maryland Oil and Development Co., from my recollection, had no options on any land adjoining the oil tract proper, with the exception of the Ball tract. That was the only option we had, or the Maryland Oil and Development Company had.

Mr. Hinchman was the name of the farmer from whom I heard of Ball's death. He is not a farmer there, but he owns a farm in that vicinity. He gave me the information. I did not know where he got it. In my purchase of the Berry farm, I don't know how I paid the money, but I lived up to my obligation and paid for the farm. I only owe twelve hundred dollars on it now.

I do not remember whether it was evening or morning that we held the directors' meeting at which the Ball purchase was approved. Early morning or evening.

Argument by counsel.

At that time the executive committee of the Board of directors was composed of M. R. C. Baughman and Mr. Fred Briggs and myself and Mr. Thomas, secretary.

Mr. Briggs is in the market; as I understand, Mr. R. C. Baughman was manager of the Independent Oil Company located at First and North Capitol street-, or out in that direction somewhere,  
336 New York avenue and North Capitol street.

If I stated that I called a meeting of the directors on the morning after I returned from my talk with Dr. Griffith, at which the purchase was agreed upon, I should have stated the executive committee. They were gotten together very early in the morning or late the afternoon before, but I think it was early in the morning.

Yes, I said in my testimony that I called this meeting the morning after I returned, and I think that is correct. I called the executive committee together and we discussed the matter. It was held in the morning—early morning of that day, if it was at any time. It was the evening before or that morning. If I said in my former testimony that it was the morning, it was in the morning.

Argument between counsel as to distinction between call and getting the committee together.

I will state exactly what a call consisted of; simply going to the telephone and telephoning to Mr. Briggs and Mr. Baughman. They came down to the office of the Maryland Oil and Development Company and the meeting was held and the matter discussed.

I said before that I thought the meeting was in the morning.

I could not tell just exactly at this time, at what hour the meeting

took place, but I know it was called before we sent Mr. Thomas down to Prince George's county.

If my memory serves me right, Mr. Thomas was but a few minutes after the meeting was over, in starting for Marlboro; a very  
337 few minutes after the matter was straightened up, the check drawn and the matter consummated.

In reply to your inquiry whether or not it is a fact that my conversation with Dr. Griffith occurred on Thursday afternoon in the neighborhood of four o'clock, June, and if it is not a fact that Mr. Thomas was in Marlboro before eleven o'clock of June 5th, the next morning with my check, I say that I could not tell you anything about that.

Objected to by Mr. Thomas.

As near as my recollection goes my agreement with Dr. Griffith was made at four o'clock or later at Centerville, probably on June 4, but I don't know the exact date, but it was four o'clock in the afternoon of one of those dates.

As near as I can get at it it was Thursday and Thursday you say falls on June 4th, but it may have been the 3rd, but whatever date it was, those are the facts of the case.

It is not a fact that any directors' meeting that was held with reference to this matter occurred after Mr. Thomas had started for Marlboro.

I could not tell you whether Mr. Thomas signed that contract and was in Marlboro as early as ten o'clock on the morning of June 5th, the morning after we had our conversation; I was not with Mr. Thomas, so I could not tell what time he got there.

In reply to your question whether it is possible that Mr. Thomas could have left the office early enough after the directors'  
338 meeting to have been there, and whether or not it is not a fact that the directors' meeting did not occur after ten o'clock on the morning of June 5th, I say that the executive committee meeting was held before Mr. Thomas was sent to Marlboro. My best recollection is that this meeting was in the morning. I don't remember whether or not Mr. Thomas drove down there; it is quite a drive to Marlboro. It is quite a distance from my office down there. I do not know the exact distance, and cannot say that it is in the neighborhood of eighteen or twenty miles.

It is not a fact that what occurred was that I made this contract and subsequently the Maryland Oil and Development Company took up the deal that I had made on my own part. That is not a fact; it was made and understood before it was made thoroughly. I had no money in the matter whatever, with the exception of the \$100 I advanced to them. I had no connection with it in any way, shape or form as a personal matter, with the exception that my name was to be used. I would not like to state that June 5th, is the correct date of Mr. Thomas being there, although the contract is dated June 5th.

In regard to whether the date as given in the contract or agreement that was signed for this sale is or is not the correct date, I would not say because I do not know. As far as the dates are concerned it is somewhat mixed to me.

I would not like to say as to the exact date that I made the agreement with Dr. Griffith; when I said Thursday, it was as near as I could recollect.

Q. Repeat the first conversation that occurred between Dr. Griffith and yourself with respect to this purchase. A. Mr.

339 Leapley and I called on Dr. Griffith in Marlboro and Mr. Leapley introduced me to Dr. Griffith, as the president of the Maryland Oil and Development Co. and I stated to him that I wanted to secure a lease for the Maryland Oil and Development Company, saying that I thought we were entitled to a lease from the fact that we were spending large sums of money here and that all land owners and citizens ought to assist us in trying to develop Prince George's County and if there was any advantage to be given anybody that it ought to be given us; that we were spending the money and developing the territory; that what I wanted was a lease the same as they gave in Pennsylvania and Ohio which would give one-eighth of all of the oil on the land that was saved. Dr. Griffith said he did not think the Balls would lease; he thought it was out of the question, that they wanted to sell. I told him that that was out of the question; that we would not do that, but that we would like either to get a lease or if we could not do that we wanted an option on the land and suggested that he give us an option on it, but first of all I asked him whether he had a power of attorney and he said he had not and I said, "Well, it is hardly much use talking to me. You better secure a power of attorney before we can talk." He said he could get one. I said, "Now, Doctor, get us an option on the land and get us as long a time as possible," and I suggested \$250.00 down and a six months' option.

340 He said he did not think they would give us an option unless we paid \$500 down. Then it was agreed that we would meet him at Meadows and he would see the Balls and see what he could do with them and we would meet him at four o'clock. There was some other conversation but I do not remember it exactly, but it was all on the same question. There was not anything talked of except about an option or anything else considered but an option on the land.

It is not a fact that what I talked about was a sale of the land itself.

I had sent Mr. Leapley to the Balls to lease and they seemed to be adverse to leasing, but on the last visit to them they reported to him that they had placed the matter in the hands of Dr. Griffith, their doctor, and whatever he did they were satisfied with. That was the report that Mr. Leapley made to me. I told Mr. Leapley to see Dr. Griffith.

Q. Now, give the conversation at the Ball farm. A. When we got to the Ball farm there was a carriage there and this man—Mr. Ridgeley was there. We waited some time and then Dr. Griffith came out of the house and Dr. Griffith and I walked to one side and he said that the Balls would not take less than five hundred dollars down for the option and make the time five months and I said I was sorry that the Doctor could not get six months and he said that one reason is from the fact that they cut a little wood off



of the place and their wood cutting commences about the first of November, or they make their arrangements to have it cut off at that time, and in the event that I did not take the land they can make arrangements to cut their wood. So then I talked to  
341 him about making it November 7th and he agreed to it.

Then we talked about the forty dollars—or the burial lot (not the forty dollars, but the burial lot) and three or four acres that had been sold off the place and then we agreed; that is, Dr. Griffith said we would make the price at forty dollars an acre and I accepted it at that. Then I stated to Dr. Griffith that the reason I was taking this land in my own name was from the fact if it was known in Prince George's County that we were paying large prices for options on land that we would not be able to lease an acre of land and that it was the money of the Maryland Oil and Development Company and not mine and that I would have to go back home and bring the matter before the Maryland Oil and Development Co. and if they were satisfied why the deal was a go. The time was fixed at the following Monday for me to send the five hundred dollars down to close the deal. That is as near as I can recollect.

Yes sir, this conversation occurred at four o'clock or a little after four o'clock, in the afternoon.

It is about eleven miles from the Ball farm to my office in Washington.

Mr. Thomas' office at that time was in the building. It strikes me that I did see Mr. Thomas that afternoon or evening; I am not sure.

I do not think I gave him a check that afternoon or evening dated the next day—I think I gave it to him the next morning. The whole matter was done in a hurry. He was anxious to get away and the checks were all drawn up right then and there. I may have  
342 given him the check the next morning before eight o'clock in the morning. It may have been before eight o'clock, because it was summer time and we were up and doing and everything was alive. Mr. Thomas was an urgent fellow and he wanted this deal to go through and he was anxious to have that tract as we had made arrangements for the drilling—for the new system of drilling.

In reply to your question as to whether or not it is correct that I made the agreement eleven miles or so from Washington after four o'clock one afternoon and had Mr. Thomas starting from the office by eight o'clock the next morning and in Marlboro, twenty miles away, before ten the following morning, although we had until Monday to close the deal, I say, Mr. Merillat, that I have said before that as far as these days are concerned that I do not really know whether there was a day intervening there or whether it was the next morning. I am not positive as to the time, but whatever time it was, the facts of the case are the same. Mr. Thomas was sent to Marlboro with that check; the check was drawn for me and I deposited it to my credit and it is as straight as a string.

I was not as glad at that time to make that deal as Mr. Thomas, the attorney, and the members of the executive committee.

Q. You say you told Dr. Griffith that it was the Maryland Oil and Development Company that was acting throughout, is that correct? A. I told him I was acting for the Maryland Oil and Development Company.

Q. That it was the Maryland Oil and Development Company's money? A. Yes, sir, the Maryland Oil and Development Company's money.

Q. They were making this deal? A. Yes, sir.

Q. But that you did not want that fact to be known? A. Did not want it to be known; no, sir.

Q. You knew Dr. Griffith was a country doctor, whose practice took him into the homes and families of all of these peoples, did you not? A. Yes, sir.

Q. And what, if any, occasion was there for telling Dr. Griffith for whom you were acting and making him acquainted with that fact if there was a real undisclosed principal whose identity you wanted to keep quite. Why should you have disclosed it to him? A. From the fact that that is my method of doing business. I always tell people what I mean and what I am going to do and I do what I will say I will do.

Q. And the next morning in writing a letter to him which is documentary, you referred to your agent as your attorney. Is that not correct? A. Yes, sir; that is, it was typewritten by somebody else and I sent it. It was written while I was up in my office.

Q. And in that documentary evidence which we have of the contemporaneous facts you likewise made no reference to it being an option agreement of any sort whatsoever. Is that correct? A. I did make reference to it from the fact that I said it was to carry out the arrangements made between him and me and they were for an option.

Q. You are a lawyer, are you not, Dr. Stewart, among other occupations? A. I am a graduate of the Georgetown University and am a member of the District bar.

Q. Likewise a University graduate and a man of affairs? A. Yes, sir, graduate of the University of Pennsylvania.

Q. Can you tell me why, if it was the Maryland Oil and Development Company's matter, the Maryland Oil and Development Company in no wise appears in this matter in the letter that you sent?

Mr. THOMAS: Does not counsel think he better reserve his argument for the court rather than arguing with the witness. I object to all of these questions as merely argument. It may be that Dr. Stewart cannot give as good a reason for the case as counsel, but I submit to the Court there is no reason why the testimony of the facts of which the witness speaks should not be accepted.

Mr. MERILLAT: I think there are many reasons why the witness's statement should not be accepted in view of the conflict of evidence.

Mr. THOMAS: You might perhaps give reasons to the Court and I

think that is the proper place for it, but, however, I know this will not stop you.

(Hereupon the question was read.)

A. From the fact that there was a full understanding between Dr. Griffith and myself as to who the proper parties were and it was positively understood it was an option and this letter was drawn hurriedly because Mr. Thomas was so anxious to get off to Marlboro to consummate the deal and they never anticipated that there would be any question or doubt thrown on the matter as there is to-day.

Q. And that same answer would apply as respects the fact that it appears that you wrote to complete the purchase and did not in any wise use the word option in that letter. Is that correct. A.  
346 It was simply an option purchase as we agreed upon and it is in the contract.

Q. Was it your purpose to have a contract that would be so drawn that whereas Dr. Griffith might think he was making a sale and you would have the feature that you could claim was an option in it?

Mr. THOMAS: I object to the argument. The witness was not present when the contract was drawn.

Mr. MERILLAT: I am asking for a fact.

Mr. THOMAS: He has already stated what occurred between himself and Dr. Griffith. I object to the inference and call for facts.

Mr. MERILLAT: He signed it and I am asking for the fact. The witness can deny it was his purpose and if it was his purpose it is a fact.

(Hereupon the question was read.)

A. No, sir. It was with the full understanding that it was to be an option contract before Mr. Thomas went down there. I want you to emphatically understand it and I wanted Dr. Griffith to understand it that way and I am sure that he did.

Q. Did you consider it important at the time of the first conversation in Marlboro with Dr. Griffith that he procured a power of attorney? A. Yes, sir, there would be no reason for our dealing if he did not have a power of attorney.

Q. My question was simply whether or not you considered it important.

Mr. THOMAS: He said so.

347. Q. Now, as a lawyer you knew that Dr. Griffith's authority under the power of attorney would be governed by the power of attorney, did you not?

Mr. THOMAS: I object to that. The question of Dr. Stewart's legal ability is not involved in this case. He may answer that legal question and he may answer it wrongfully.

Mr. MERILLAT: I asked him simply if he knew it as a lawyer that Griffith's authority would be governed by the power of attorney.

A. I did not think that Dr. Griffith would get a power of attorney and then exceed his power of attorney. I thought he was an honorable man and would know what he was doing.

Q. You say you were acting in this respect as the attorney and agent for the Maryland Oil and Development Company, were you not? A. I was acting as an officer of the company—the president of it and delegated to procure leases in Prince George's County and in this particular case an option—to procure an option for the company, which I did, and foolishly allowed my name to be used instead of the company's.

Q. I believe you say that you never at any time prior to the consummation of this agreement saw the power of attorney which was the basis of the whole agreement. Is that correct? A. Which power of attorney?

348 Q. I refer now to any power of attorney. You so testified, did you not? A. The day I signed the contract I was in a hurry and depended on Mr. Thomas, the attorney for the oil company, as it was their matter, to investigate the power of attorney and asked him whether he had seen the power of attorney and whether it was all right. He said "yes." I looked over the contract hurriedly and particularly as to the option clause and that seemed to be as perfectly clear as could be and signed the contract, at the same time telling Mr. Roberts that it was a matter of the Oil Company's alone and that I had no interest in it whatever; it was their money and I said, "Do you understand that, Mr. Roberts?" And he said, "certainly."

Mr. MERILLAT: I move to strike out so much of the answer of the witness as is not responsive to the question. The question that was asked was, "Did you at any time see any power of attorney prior to the consummation of this deal and the affixing of your name to the typewritten power of attorney."

Mr. THOMAS: The witness has already answered the question.

Mr. MERILLAT: I submit that he has not and I ask the Examiner to repeat the question.

Mr. THOMAS: Just ask the question again.

Q. I asked you whether or not prior to the signing of the contract of sale that is recorded you saw any power of attorney from Ball to Dr. Griffith? A. I don't believe I did.

349 Q. You were particular you say in all of your talk with Dr. Griffith to refer to this matter as an option agreement. Is that correct? A. Yes, sir.

Q. You did not, however, deem it particular in the written authority you gave your agent not to say anything about it being an option agreement?

Mr. THOMAS: That is mere argument.

Mr. MERILLAT: That is correct, is it not?

Mr. THOMAS: That is not correct. Counsel has no right to say it is so because the witness has already stated in his testimony given in this case that the understanding mentioned in the letter were the conversations that he had had with Dr. Griffith wherein he stated that it was an option he was talking about and that was what he wanted and that it was nothing else; that it was nothing else; that

he was acting for the Maryland Oil and Development Company and that the company was the purchaser under that option.

Mr. MERILLAT: I think it very material in view of the fact that we have a conflict between the two parties thereto that we have in evidence written contemporaneous documents.

Mr. THOMAS: I do not dispute that.

Mr. MERILLAT: Read the question.

Mr. THOMAS: You are not obliged to take his version of the conflict, Mr. Stewart. You can make your own statements of that.

350 A. I simply stated that Mr. Thomas, my attorney, would carry out the arrangements that had been made between Dr. Griffith and myself, which I have fully stated before.

Q. What price was named in your conversation?

Mr. THOMAS: What conversation?

Q. With Dr. Griffith originally. A. At the Ball farm the price was made forty dollars per acre and I may state that at Griffith's house the acreage was fixed at 240 acres, less one acre to be reserved which the Balls had talked to him about and three or four acres sold off the place, more fully talked of at the Ball place.

Q. When was it that you claim there was any talk about ten thousand dollars being the price? A. That was said by Dr. Griffith at our first conversation also.

Q. Did you agree upon ten thousand dollars as the price to be paid? A. Hadn't agreed on anything at his house. It was to be submitted to the Balls and report to me and we adjourned the meeting to report at Meadows.

Q. What reason was there for a change of the price from ten thousand dollars to forty dollars an acre? A. On account of the number of acres that had been sold off.

Q. Was that the only reason? A. There may have been some argument as to the price on my part, ten thousand dollars being excessive. I won't be sure.

351 Q. Well, my question is—— A. We were dickering and talking.

Q. My question is if that is the only reason for the change that was made in the price from ten thousand dollars to forty dollars per acre?

Mr. THOMAS: He has given you another reason. He said he might have objected to it as excessive. That is another reason.

Q. It was definitely fixed that 240 acres was the acreage? A. That was the number of acres less those that had to be taken off, so it said 240 acres more or less. It was known that several small tracts had been sold off the place and this one acre reservation for a burial lot.

Q. Who do you say named ten thousand dollars as the price, you or Dr. Griffith? A. Dr. Griffith.

Q. Did you agree to that price of ten thousand dollars when he mentioned it? A. No, sir, from the fact that the matter was not settled until after we got to Ball's house.

Q. Was your reason for disagreement because you thought it was

excessive? A. No, sir, that did not come into the matter at all. The main issue was to get as long a time as we possibly could and to pay down as little as we must.

Q. How many acres was it understood altogether were to  
352 come off of these 240 acres? A. That was to be decided by a survey and the papers I think.

Q. Well, did you have any understanding then that six acres was to comprise all that had been sold off and the burial lot? A. He said something about that—to that effect.

Q. Is it not a fact that the reason for the survey was that, as Dr. Griffith has stated, that the exact number of acres was unknown, Ball claiming that there were more than 240 acres, and you fixed an acreage price or the total price to be finally determined by the survey? A. No, sir.

Q. Did you have any conversation with reference to the taxes with Dr. Griffith? A. I don't remember of anything being said about the taxes.

Q. In his letter of September 4th I think he speaks of having had an agreement with respect to it—as our agreement with respect to the taxes. Is that correct? A. That I think was an agreement with Mr. Thomas.

Q. Not with you? A. No, sir.

Q. At the time the directors' meeting was called at which you say this matter was laid before them, was it also laid before them that under the agreement you were to pay one-half of the taxes? A. The matter was not laid before the directors' meeting.

Q. The executive committee? A. The executive com-  
353 mittee and there was not anything said then as to the taxes.

Q. The complete details of the agreement as I understand it then were not submitted to the executive committee. Is that correct? A. The main issues were. As to the amount of money to be paid down and the arrangements were made for the money at that meeting and the time of the option and some other details were talked over. As to just what were all the details that were talked over I do not know, but the main things were all talked and discussed. That tax business was considered a very small matter and very unimportant with them.

Q. Is it not a fact that the time limit making it expire in November was not because of any option feature, but because the Balls wanted to guard themselves against a possible non-fulfillment of the contract of purchase? A. November 7th was fixed and suggested by myself and accepted by Dr. Griffith and had not been submitted to the Balls. He said they would give us five months, but he acquiesced in that after it was suggested by me on account of the time being made Monday to come down and consummate the deal. It was not as the question which has been asked.

Q. When did you first learn of Dr. Griffith's compensation for making this deal? A. The same day after I signed the contract.

Mr. Thomas told me.

354 Q. Did Mr. Thomas at that time tell you that Dr. Griffith had no authority to make an option contract at all? A. No, sir.



Q. When did you first learn of what Dr. Griffith's actual authority was under his power of attorney? A. When we commenced to investigate the contract and the power of attorney afterwards we discovered all the weaknesses of it and practically what fools we were in paying down five hundred dollars on the contract.

Q. Doctor, is not the present outlet of the oil tract proper over or through some tracts of land in part that belong to other people? A. Not that I know of. It is all our own land. We drive in a road off of the road running from Centerville to Red's Corner. It seems to be on the boundary line of the Ball tract and through some other tract of land and goes in and then we make a sharp turn and enter on our own land.

Q. Don't you go through what is known as the Pumphrey and Claggett tracts—private property? A. I don't think so. There is a road there.

Q. But I asked you if that is not a private road and one that your only right to use is a private concession? A. It may be by prescription or concession. I do not know. Nobody has ever objected to our going over it.

Q. I would ask you whether or not if the Ball purchase would not give you a direct road comparatively through to where  
355 the Pumphrey store is from the oil well and much shorter than your present route? A. Starting from the Berry corner there is a good road running direct to the Marlboro pike and bringing out absolutely at Pumphrey's store. If you were to build a road over the Ball tract to go to Pumphrey's store it would parallel that road and would practically be a new road alongside of an old road.

Q. You don't think then, Doctor, that a road through the Ball tract would shorten the distance a mile or so? A. I do not. I think that it would be useless waste of money. You might make an air line road through there which a surveyor would have to run, but what the sense of it would be I could not tell. It would be absolutely foolish.

Q. Was not the purpose of yourself in acquiring these three tracts of land to have the property for subdivision and colonization in the event that oil was discovered and did you not look for profit in those tracts in that way? A. The reason I bought the three tracts of land was simply on the oil expectations and that alone. We were drilling on the Maryland Oil and Development Company's property and if we struck oil there it might be possible that we would strike oil on these three tracts if we had drilled, but as far as the colonization is concerned, I never thought or dreamed of that, only may have thought of it in the event of our not striking oil, as the last resort.

Any old thing to get my money back.

356 Q. Doctor, in these two conversations with Dr. Griffith which resulted in an agreement for the Ball tract, did you have a conversation as to the employment of Mr. Roberts? A. It was suggested by Dr. Griffith—I think it was my suggestion to him that, of course, we would want a good title. He said that he would get Joe Roberts to look up the title—make a search of the records,

and I said I thought Joe Roberts was a careful lawyer and would be able to make a careful search, but that the company would insist upon a good title and it would be left to them.

Q. Had Mr. Roberts done similar work before for you? A. When I purchased the Richardson tract Doc. Richardson was to give me a good title, and the certificate of title was given by Stanley and Roberts. That is the law firm of Stanley and Roberts. I also received a warranty deed from Richardson as to the others. I don't think that—I know he hadn't anything to do with them. That is the only one I remember that he was connected with in any way.

Q. Did you accept Mr. Robert's report? A. Yes, sir.

Q. In that previous matter? A. Yes, sir, from the fact that Doc. Richardson was a reputable man; owned property in Prince George's County and gave me a warranty deed.

Q. Mr. Roberts is the resident member of the firm of Stanley and Roberts, is he not? A. Yes, sir, he is Doc. Richardson's attorney or was.

Q. Mr. Roberts has sued and obtained judgment for one-half of the cost, or one-half of his total charge for making the deed and title search with respect to the land now in controversy, has he not?

Mr. THOMAS: I call for the record of any such suit. I don't understand that this witness has ever been sued or that any personal service has ever been had on him.

Mr. MERILLAT: If counsel desire it we will put in the record and certified copy of the judgment.

A. I have never had personal service upon me in any suit instituted by Mr. Roberts in Prince George's County. I learned that he has attached my land and got service on a tenant on the Maryland Oil and Development Company's land, but not on my land.

Q. Has he obtained a judgment against you, if you know? A. I cannot tell you. That is all I know, that the attachment has been served.

Q. You did not defend that action? A. Why should I when I never had service upon me. I considered it an illegal suit anyhow because I do not owe Joe Roberts anything.

Q. When you signed this agreement which has been recorded in Prince George's County did you know that there was in it the sentence providing for the title search by Mr. Roberts? A. No, sir, I did not.

Q. Did you know that there was in it an agreement for the survey and for payment of the purchase price on the basis of forty dollars an acre and that it was stated that the tract contained 240 acres, more or less? A. I knew that the number of acres was to be 240 acres.

Q. I asked you if you knew what was in the agreement upon that score? A. I glanced over it and I remember that I saw that the property contained or the number of acres was fixed at 240 acres.

Q. Doctor, as I understand you then, although you were dealing for another you gave very little heed to the contents of this paper

which has been recorded and to which you affixed your signature. Is that correct? A. That is correct from the fact that it was left to the attorney of the Maryland Oil and Development Company, the party in the suit, and I understood that their attorney would carry out the deal in a proper manner.

Q. Doctor, do you contend that this power of attorney, which is attached to and forms a part of the contract of sale, recorded in Prince George's County, was not annexed to it when that paper was sent down by you to be recorded?

Mr. THOMAS: I object to that. The witness's contention hasn't anything to do with the question. Counsel will argue the case to the court. The witness has already testified about that power of attorney.

Mr. MERILLAT: On direct, but not on cross examination.

Mr. THOMAS: On direct examination and I do not object to any question about it on cross examination, but I do object to his  
359 argument about his contention or the position he takes. I take the position as his counsel that this record shows that the paper was tampered with; that the truth has not been told on the other side in respect of this power of attorney.

(Hereupon the question was read.)

A. I do not know anything about that power of attorney.

Q. How did it get of record? A. I did not know that it was on record.

Q. Who sent the contract of sale to Prince George's County to be recorded? A. I did.

Q. To whom did you send it? A. To the recorder of deeds. I do not know who that was now. I forget.

Q. Who sent it, or did you send it to James B. Belt, clerk? A. Yes, sir.

Q. And when you sent the paper down there was not that power of attorney a part of the paper that you sent to be recorded? A. I do not know. This seems to be attached to the contract. I do not have any recollection of that being with it, or part of it.

Q. Do you claim that Mr. Belt, or any one in his office, took the paper that you sent down there to be recorded and added to what they recorded that contract of sale?

360 Mr. THOMAS: I object to that. The witness does not claim anything. Counsel for the defendant in this case will make the claim to the court. The witness states facts as to what he did.

A. I think the mysteries of that power of attorney can be better cleared up by the complainants in this case than by myself.

Q. I will ask you when the paper was returned to you? A. It was returned to me after the demurrer in this case was answered.

Mr. THOMAS: Argued you mean?

A. Yes, sir, argued.

Q. Did you make any request that this paper be returned to you at any time prior to the time that it was returned to you? A. I don't think I did.

Q. When it was returned to you this power of attorney was attached to the paper, was it not? A. Was attached to the paper, yes, sir.

Q. And it was stated on the back of it, was it not, on the back of the power attorney part that this contract and power of attorney, the whole paper, had been recorded on a certain liber and folio of the land records there? A. Yes, sir.

Q. At the time that that paper was sent to be recorded was there any talk then to the effect that this deal would not be put through and any reason to believe that there would be any controversy over this subject matter? A. No, sir.

361 Q. It was the first or second of July, 1903, that you sent the paper down to be recorded, was it not? A. It was about that time; yes, sir.

Q. How did you send it down, by mail or otherwise? A. By mail, I think, with the check.

Q. You have no knowledge, have you, of any sort, of either Dr. Griffith or any one outside of the clerk's office having that paper in their custody intermediate of the time of your sending it and the time of its recordation? A. As to any fact on my part?

Q. Yes, sir, I asked you for any knowledge of any fact of their ever having it? A. None.

Q. You received a number of letters from Dr. Griffith between June and November 15th, 1903, did you not? A. I did.

Q. All of those letters were addressed to you personally? A. They were.

Q. Did you at that time write him any letter to the effect that you personally were not interested, but the Maryland Oil and Development Company was the proper party?

Mr. THOMAS: I object to that. The letters have been produced in evidence and speak for themselves.

Mr. MERILLAT: But my question is not that.

Mr. THOMAS: You called for his letters.

Mr. MERILLAT: I asked you if he wrote any.

Mr. THOMAS: I called for any letters that Stewart wrote  
362 Griffith and I now call for any if you have them.

Mr. MERILLAT: Counsel have wholly misapprehended my question. My question is if he wrote him any.

Mr. THOMAS: If he did not why then they cannot be produced.

Mr. MERILLAT: I submit this is all outside of the record and it is useless to have it on there.

Mr. THOMAS: Now, I want counsel to answer that call, if there is any letter or not.

Mr. MERILLAT: If we are able to find the letter it will be produced.

WITNESS: I did not write him any letters.

Q. The first occasion on which there is any written evidence, or any written statement, to the effect that you were not personally interested, but really represented the Maryland Oil and Development Company, and that said company was the real party, appears in the

letters of November 23rd Is that correct? A. No, sir, the first letters that tend to show that it was the matter of the Maryland Oil and Development Company's alone came from Mr. Roberts, and as early as June 13th, about seven or eight days after the contract was entered into by myself.

Q. I do not refer to Mr. Roberts, but Dr. Griffith. I asked you whether or not, so far as concerns either yourself, Mr. A. W. Thomas or Dr. Griffith, the first letter in which there is a claim or written communication in which it is claimed the Maryland Oil and Development Company was the real party, is not the letter of 353 the 23rd of November? A. To Dr. Griffith; yes, sir.

Q. Your letter of November 23rd, is not that the first time you made any claim in writing? A. It is not the first time I made any claim. I told Dr. Griffith, but as it was the only letter that I ever wrote Dr. Griffith, with the exception of the tax letter, so it was the only one I could put it in.

Q. I will ask you whether or not on November 23rd, two letters were written to Dr. Griffith to the effect that the Maryland Oil and Development Company alone was interested; one by you and one, I think, by A. W. Thomas. Is that correct? A. I do not know whether it was to Dr. Griffith, or who the letter was addressed to.

MR. THOMAS: Which one do you mean?

A. Both of them. The 23rd. I know my letter was addressed to Dr. Griffith. The letters are in evidence.

Q. Did Mr. Thomas write his letter at your suggestion of November 23rd, to Dr. Griffith? A. As I stated before in my direct evidence that I was considerably put out from the fact that after the matter had been finally and fully settled by the letter from Dr. Griffith to me saying that if the money was not paid down on the 16th the whole matter was ended, that they should revive it again and I called Mr. Thomas' attention to it, that I was in a very unpleasant position, between his standing "pat" for the company and

364 Dr. Griffith on the other side, and that I did not like the position and I was going to notify Dr. Griffith to that effect, which I did in that letter.

Q. Did you request him also to notify Dr. Griffith to that effect?

A. I did not.

Q. Did you see his letter prior to its being sent to Dr. Griffith?

A. I don't remember of having seen it. I think he told me he was going to write a letter though.

Q. Did you take any part in its preparation? A. I did not.

Q. Did he take any part in the preparation of your letter? A. No, sir, not to my recollection.

Q. I will ask you whether or not it is not a fact that those letters in each case are a joint production of yourself and Mr. Thomas and that each of you were aware of what was in the other letter prior to either or both of them being sent? A. If I was to tell the truth about that—we had a conversation in regard to the matter, as I stated before, and he was the attorney for the company and he was standing "pat" on this deal and said he did not want me to prejudice their position; that they had paid five hundred dollars down on

this property; that they hadn't a good title and that they would not allow a forfeiture to be declared on them unless—would not  
365 allow a forfeiture to be declared on them because there hadn't been a title shown them. I said I did not care anything about that at all, but that I was in a position with one party on one side who was going to push the matter and the party on the other side declaring that they were going to stand "pat."

Q. Do you know how it happens that those two letters in phraseology and underscoring happen to bear a close resemblance, one to the other? A. From our conversation that was held between us. I told him I was going to notify Dr. Griffith.

Q. And you deemed it necessary, as I understand then, that both yourself and the oil company write letters to Dr. Griffith apprizing him of what you had already verbally told him and underscoring the Maryland Oil and Development Company in each instance? A. I suppose we wanted to make it very emphatic.

Q. Why were you elated on receiving Dr. Griffith's letter stating that the matter was ended if he did not receive payment and settlement by the 16th of November? A. As I said before I knew the Maryland Oil and Development Company would not make the payment on the 16th from the fact that they had taken the position that they were going to stand "pat" until that title was consummated and their attorney, Mr. Thomas, even talked of possibly their having the five hundred dollars back. Of course; naturally I was elated that the whole matter was closed from the persistence of Dr. Griffith in coming to the office and my name being used and it was a relief to me.

366 Q. That the whole thing was over with? A. That the whole thing was over with.

Q. Now, Doctor, if it was understood that this was entirely an option contract, why did you need to receive a letter to the effect that it was ended? Did you as a lawyer believe that a failure to comply with the terms by the 7th of November *ipso facto* ended the whole matter, if it was an option?

Mr. THOMAS: Objected to. A man can be elated by being relieved from the annoyance of a threatened law suit, at the same time knowing that he has a perfect legal defence to it if it is brought, and for such reason this question, among others, is purely argumentative.

A. I am glad that Mr. Merillat has asked that question, from the fact that I always believed that if the money was not paid down on the 7th of November that ended it and from the fact of Dr. Griffith coming up on the 9th of November after this and not mentioning anything about the Balls being dead I supposed the whole thing was ended and I was elated at the whole matter. The whole deal was off and then when he wrote the letter stating that it would be ended on the 16th I was satisfied that he understood it that way and I understood it that way and that was the termination of the whole matter. In fact brought the matter to a final issue.

Q. Is it not a fact that about the very first thing that was mentioned when Dr. Griffith came up was that Ball was dead. I mean



his visit of November 9th or thereabouts? A. Dr. Griffith  
367 did not say that Ball was dead until I asked him.

Q. Was not almost the very first *towards* after he entered, "What is the matter with your man?" And his response, "Nothing, except he is dead." Or words to that effect. A. He said he came to receive the second payment of the money and I said, "Have you got a deed?" He said, "No, sir, but I can give title." I can give title." I said, "What is the matter with your man?" He said, "He is all right, he is dead."

Q. That was about the very first thing that occurred? A. Yes, sir.

Mr. THOMAS: In other words, you have given the conversation?

A. Yes, sir.

Mr. THOMAS: I submit that it appears from the witness' statement that the first thing was not that Ball was dead.

Q. I will ask you whether or not you know of Mr. A. W. Thomas after the 16th of November visiting Prince George's County and examining the records there to ascertain exactly what was the state of things with reference to the Ball estate and as shown by the official records. A. I really do not know the day it was, but it was considerable time after that he was sent down by the company.

Q. Did not go down in any wise to represent you yourself? A. No, sir.

Q. I would like to ask you whether or not as soon as  
368 possible after yours and Mr. Thomas' letters with reference to the Maryland Oil and Development Company were sent to Dr. Griffith you did not receive a very positive letter that he had had his dealings with you alone and looked to you alone?

Mr. THOMAS: I object. The letter will speak for itself, whatever its contents were.

A. The doctor emphatically showed his teeth then.

Q. How many calls did you have from Dr. Griffith between June and November 9th? A. I could not tell you.

Q. More than two? A. May have been. You mean to November 9th?

Q. Yes, sir. A. There may have been two or three calls. I could not tell. I know he came in several times.

Q. They were what you called pop calls? A. Short calls; yes, sir.

Q. What do you refer to when you speak of his persistence in endeavoring to push this matter? A. There had been no effort on our part to pay down the money on the 7th of November. Nothing said to him whatever in regard to the matter. It was left to die of itself. Nobody bothered him or said anything to him about it. I received two letters on the 5th from him; one in the morning and one in the afternoon and another dated the 7th and the visit on the 9th. If that is not persistence I do not know what is.

Q. Was this letter of the 5th one in response to a letter  
369 from you? A. I don't think so.

Q. You are quite positive you did not write him in the early part of November, 1903, asking him to come up and see you before the 7th? A. I don't think I did.

Q. You are positive on that score? A. I do not know.

Q. After November 16th you had a conversation, did you not, with Dr. Griffith at which Joseph Roberts was present with respect to the carrying out and completion of this contract? A. Not to my recollection.

Q. Did you have a conversation at which Mr. Ambrose was present with respect to the completion and carrying out of it? A. I did.

Q. As I have understood you, you deny the accuracy of Mr. Ambrose's statements as to what occurred? A. Positively.

Q. And you likewise deny that it was agreed between Dr. Griffith and yourself that this was to be a purchase of the land? A. Positively.

Q. Also that you had reached an agreement with him as to the taxes? A. I don't remember the tax matter at all, whether or not it had been discussed with Dr. Griffith at the Ball place.

370 Q. And you deny that he told you? A. Or at any other time.

Q. But you deny that he told you that the Balls claimed that there were 275 acres in the tract? A. Positively.

Q. And that it was agreed between you then that the matter should be settled on the basis of a survey and the land paid for on that basis? A. Positively.

Q. Dr. Griffith's statement is not correct where he says he never heard it was the Maryland Oil and Development Company from you at this conversation of June 4th? A. The statement is positively incorrect.

Q. Your letter of June 5th is inaccurate in that it refers to Mr. Thomas your attorney? A. Mr. Merillat regarding that letter it simply was this, it was merely a letter of introduction of Mr. Thomas to Dr. Griffith and had no significance whatever. It was simply stated that it was to carry out the arrangements that had been agreed upon between Dr. Griffith and myself.

Q. The letter, however, was still inaccurate in its expression of the fact that Mr. Thomas was your attorney? A. He was not my attorney personally. He was the attorney for the Maryland Oil and Development Company and was just simply carrying on the agreed arrangements between the Maryland Oil and Development Company and Dr. Griffith. We were acting as the mere machines or agents in the matter.

Q. That letter also is not accurate in expressing this as a  
371 purchase and not as the buying of an option? A. It was an option purchase.

Q. Who typewrote that letter? A. I do not remember. I do not know in fact.

Q. Did you? A. No, sir.

Q. Did you dictate it? A. No, sir, it was prepared for me and I signed it.

Q. Prepared by whom? A. I don't know. It was prepared in the office there.

Q. Did Mr. A. W. Thomas prepare it? A. I don't know whether he did or not. I could not swear to it.

Q. Did you read it over before you signed it? A. I glanced over it hurriedly and signed it.

Q. Why was there any occasion for special hurry with respect to your writing that letter or with respect to your signing this recorded deed, both of which you say were done in a hurry? A. From the fact that I had a large dental practice and every minute of my time was valuable, having a patient in the chair and sitting there with their mouths open and sometimes in agony and it was really an imposition upon them to have me go away from the chair at any time whilst they were under my care and I really disliked it. So when I went down there I was in a hurry to get back to the chair.

Q. Did you have any patients in your office as early as 372 eight o'clock in the morning? A. Yes, sir, sometimes I did.

Q. Do you know whether that letter was written the night you returned from Marlboro? A. I do not.

Q. Do you know whether it was written early the next morning just before Mr. Thomas left? A. It was written, of course, before he left. He would not have been able to have carried it along to Dr. Griffith unless it had been written.

Q. You are not able to tell me any more accurately the time of that directors' meeting than you have? A. No, sir, I have not had an opportunity to look up the records or make the time clear to myself.

Q. You deny, I believe, that you told the boy Richardson that it was your property? A. I told you in the direct examination just what I said to him. I did not make any such statement that it was my property. I said that we had paid five hundred dollars down on it and we ought to be entitled to have a few birds off the place and laughed.

Q. You went into the details of what your agreement was then with him as to how much you had paid down instead of saying it was "my property" or anything to that effect? A. I simply said we had paid five hundred dollars down on the property and I thought we were entitled to have a few birds off the place.

Q. You heard what he testified to? A. Yes, sir.

Q. That is incorrect what he testified to as having been said 373 by you? A. Yes, sir.

Q. Doctor, it was your belief that if oil was struck that the Ball farm would be worth considerably more than forty dollars a-acre, was it not? A. If we struck oil.

Q. And you were not ready in November, the early part of November, to have any settled conviction as to whether or not you would strike oil? Is that correct? A. Do you want my belief personally or the company's belief?

Q. I am asking for your belief? A. I hate to give it to you.

Q. Is it not a fact that after this letter of November 16th from Dr. Griffith that you continued negotiations with the view of being able to assert a right to buy this land if oil were struck and at the same time to keep yourself in a position to drop the matter if oil was not found. Didn't you in other words, want to preserve rights dependent upon results? A. In the first place I did not continue any negotiations. I positively state so.

Q. Who did continue negotiations? A. Dr. Griffith.

Q. You took part at any rate, did you not, in conversations or negotiations wherein it was suggested that further steps be taken with respect to this title? A. I told Dr. Griffith precisely the same facts that I wrote him in that letter of November 23rd, 374 wherein I stated I would not assume any responsibility of any liability in the matter and that I had nothing to do with it and that the matter was for the Maryland Oil and Development Company and he could look to them if he chose and continue negotiations to that effect.

Q. What office had you in the Maryland Oil and Development Company in July, 1903? A. I was vice president of the concern.

Q. Who had charge of the matter of this oil land purchase after the first of July, 1903? A. The executive committee.

Q. Why, when you got these letters in September from Dr. Griffith addressed to you personally did you not answer him to the effect that he must have any further negotiations and address any further letters to the Maryland Oil and Development Company and not to you? A. Because we were in the midst of our drilling in September. Things were looking pretty fair and we did not want it known and did not give it much concern. The agreement was entered into and was recorded and that is all there was to it.

Q. Well, if Dr. Griffith knew all about that why did you not write to him not — send any letters to you, but to send them to the appropriate officer of the Maryland Oil and Development Company?

Mr. THOMAS: Who was an appropriate officer?

Mr. MERILLAT: I am asking him. He has stated he was not.

A. I thought naturally that Dr. Griffith knew me in the 375 first instance in the matter and just simply wrote to say that I would not in any way act for him with the company and did not give it any concern whatever.

Q. I will ask you this question, and you can answer it in your own behalf or in behalf of the Maryland Oil and Development Company, whether or not in November and the early part of December, you did not want to be in a position where you could do whatever you wanted with respect to this oil proposition, based on whether or not you were successful in getting oil? A. Do you mean mine?

Q. Either yourself or the oil company. A. I positively state for myself that I did not care anything about it.

Q. How about yourself as an officer and representative of the Maryland Oil and Development Company, was it the company's desire to be in a position to take advantage or not according to results? A. As I stated before the executive committee were inclined to think that Dr. Griffith had in no wise lived up to his part of the contract and as he had not they seemed to think they were entitled to that five hundred dollars and stood "pat" on the matter from the fact that he had not given them title or presented them with a deed on that date.

Q. Did you or Mr. Thomas in your presence demand of Dr.  
13—1744A

Griffith back that five hundred dollars? A. I really did not care anything about the five hundred dollars myself. I made no demand for myself or company.

376 Q. And did Mr. Thomas in your presence making any demand or any one else for the company as far as you know?

A. No, sir, they hadn't, but I think they may yet.

Q. Isn't it a fact that you dragged out those negotiations in order to shape your course or the company's course according to results?

A. Mr. Merillat on November 7th this matter was to be either affirmed or ended by the payment of a certain amount of money on our part. It was not paid and on the 9th I told Dr. Griffith that it was not my matter and that he should declare a forfeiture and on the 23rd, I think, a short time afterwards, I wrote him a letter positively saying that I had nothing whatever to do with it; that it was — matter of the Maryland Oil and Development Company and if he wanted to continue negotiations with them he could or to that effect. So that I have not carried on any negotiations or lengthened it out one minute.

Q. Did you not say in the presence of Mr. Ambrose that you were ready to comply and carry out the matter whenever a good title could be had, but did not believe there was a good title? A. It seems absurd that I would tell him one thing one day and write to Dr. Griffith on November 23rd and then on December 8th changing my tactics entirely. I must positively say that I did not say anything to him at all in regard to the matter.

Q. You had Mr. Roberts' title search or report upon the  
377 title in your possession or custody clear from the summer up to and after the time named for completion of this contract of sale. Is not that correct? A. I did not have it myself.

Q. Well, was it in your custody or control? A. Not that I know anything of.

Q. You knew that he had made a report upon the title, did you not? A. It came about the same time that that notice came from Mr. Roberts with a bill to the Maryland Oil and Development Company which notified both ourselves and Dr. Griffith. He states that he notified them.

Q. At any rate you knew of his report and it had been placed in your custody or under your control? A. It was in the hands of the secretary of the Maryland Oil and Development Company.

Q. In your safe, wasn't it? A. The contract was in my safe. I do not know anything about the transcript of record.

Mr. THOMAS: You mean the title?

A. Transcript of title; yes, sir.

Q. I will ask you whether any objection whatsoever was made with respect to this title search and this title certificate prior to December, 1903? A. It was left entirely to the attorney for the Maryland Oil and Development Company and I paid no attention to it. According to the bill of Mr. Roberts there was a deed to be gotten up and delivered on November 7th with the title and, of course, the transcript of title would not be perfect that early in the game.

378 It would have to include that deed up to that date and so I paid no attention to it whatever.

Q. You were an active officer in the company? A. At this time?

Q. Yes, sir. A. Yes, sir, I was president up to July.

Q. And you made no objection whatsoever with respect to what Mr. Roberts' title certificate had disclosed during the entire life or contemplated life of this contract? A. It was left entirely to Mr. Thomas, the attorney for the company, as it was the matter of the company's.

Q. And the first objections at all so far as you are aware came sometime in December when efforts were making to force you to carry out the contract. Isn't that correct? A. No, sir.

Q. When did you make any objections to this title first? A. The day that Mr. Ball died. That is on the day after, the 9th, when Mr. Griffith came in. That is the first objection I made to the title and I knew myself he could not give title.

Q. Did you know why he could not give title? A. Yes, sir, the death of Mr. Ball precluded him from giving title.

Q. Did you know under the laws of Maryland, the executor whether he were Dr. Griffith or Bill Smith could give title to carry out and perfect the orders of the court in contracts made for or on behalf of the decedent prior to his death?

379 Mr. THOMAS: Is that cross examination?

Mr. MERILLAT: Certainly it is, if he knows it.

Mr. THOMAS: I do not know whether he knows it or any other lawyer.

Q. Did you know that to be a fact? A. No, sir, and I had been informed by the attorney for the Maryland Oil and Development Company that that was not a fact.

Q. I will ask you aside from the matter of Ball's death, when did you first make objection to any part of that title?

Mr. THOMAS: You mean prior to the expiration of the contract?

Mr. MERILLAT: I asked him when he made objection first outside—

Mr. THOMAS: You include that?

Mr. MERILLAT: Or any part of that title except the fact of the death of Ball.

A. I never made any objections to the title myself or had anything to do with it.

Q. Did any one for you or on behalf of the Maryland Oil and Development Company? A. No, sir, not on my behalf. In behalf of the Maryland Oil and Development Company, that is a different question. You ought to ask questions so that I can understand them. There are two questions in one.

Q. So that the first time that any objections to matters that had been reported on by Mr. Roberts in the early summer of 380 1903, is in the month of December. Is that correct?

Mr. THOMAS: That is not correct and the witness has not so stated. The evidence does not so show.

Q. Will the witness say that is correct?

Mr. THOMAS: I think not. I think it is a statement on your part. The witness has previously stated that the attorney for the Maryland



Oil and Development Company objected to the title and he has testified to it over and over again and your question includes it.

Mr. MERILLAT: I submit that the witness has not said that any objections were made to Mr. Robert's title certificate prior to December and I ask the witness to answer that question.

Mr. THOMAS: If he can recollect it he can answer.

A. I considered the matter ended November 16th. This matter was just being forced ahead by the complainants in this case and as to the title or anything of that kind I had nothing to do with it and took no interest in it or agreed to anything about it. I am only on the defensive now.

Q. Isn't it a fact, Mr. Stewart, that Mr. Joseph Roberts' title certificate remained in the custody either of yourself or the Maryland Oil and Development Company clear from June up to December without objection of any sort to it? A. I can only testify as far as I am concerned myself.

Q. Well, please state? A. I had no objection to it or ever  
381 said a word against it.

Q. Have you any knowledge of objections being made by the company or any one for it? A. I have no knowledge.

Q. I would like to ask you whether or not it is not a fact that during these "pop" calls, as you call them, of Dr. Griffith, you would never talk to him in the presence of any one, but always drew him to one side if there was anybody about? A. I have two rooms in my dental office; one room of which is an operating room and the other was my waiting room, with a door leading from the main hall into the waiting room or reception room. Dr. Griffith never got beyond the reception room and I never prevented anybody from coming in, the door stood wide open, and talked to him almost in the center of the room. It was immaterial who came in or who went out. I think even some of my patients heard some of the conversation carried on between us, but they did not know, of course, anything as to what we were talking about. I myself did not pay much attention to it. There was no secretion on my part.

Q. Did you know Scott Armstrong? A. I do.

Q. In the autumn of the year after you had made the purchase of the Ball tract did he come to you and seek to buy a part of the Ball tract, a small part—an acre or so? A. He did.

Q. What did you tell him? A. I don't remember what  
382 I did tell him particularly.

Q. Didn't he say to you that he was a trustee for the purpose of erecting a school building and wanted to know from you whether the land belonged to you or whether it belonged to the company? A. Whether it was a school building or a church I do not know, but he spoke about wanting an acre or some portion of it. Of course, we had been trying to get a lease from Mr. Scott Armstrong, as his land was right in the immediate vicinity. We did not want him to know anything about our business affairs and naturally if I told him anything it was told him to carry out the purpose of our taking the Ball tract in my name.

Q. Didn't you as a matter of fact tell him in October of that year when he asked you if the company had bought it, "no, sir," that you yourself personally had bought the land? A. I may have said that to him.

Q. When you were at Ball's house on the afternoon that you negotiated the deal in whose buggy were you, Leapley's? A. Yes, sir, Leapley's.

Q. Where did you go after leaving Ball's house? A. To Leapley's home.

Q. How long were you there? A. I don't know. I may have been there a half an hour or an hour.

Q. From there where did you go and how? A. Went  
383 back to Washington.

Q. How? A. By buggy.

Q. Doctor, can you give me the names of your Board of directors at that time? A. What time have you reference to, at the time of the purchase?

Q. At the time of this Ball purchase. A. If I can remember right the directors were R. C. Baughman; J. Henry Snyder of Baltimore, Maryland; Frederick Briggs; Phil W. Chew; William W. Stewart; A. W. Thomas, secretary. I think they were all of the directors, or as many as I can remember now. There was one other man—Messenier. I do not know what his initials are.

Mr. THOMAS: I note my objection on the ground that I understand the testimony to be that he called a meeting of the executive committee.

Mr. MERILLAT: I ask it because the evidence is both ways, Mr. Thomas.

Mr. THOMAS: I understand that if in the testimony it is called board of directors that it was a mere slip of the tongue; that what was called was a meeting of the executive committee. Is that correct, Doctor?

WITNESS: That is correct; yes, sir.

Mr. MERILLAT: I don't question that the Doctor is right. I am not dealing in the slip of the tongue.

Q. It was the next day that you say you called a meeting of the executive committee after you returned from Ball's? A. I called a meeting the next morning of the executive committee.

Q. Was there much discussion of this matter at that meeting of the executive committee? A. Yes, sir, there was considerable discussion.

384 Q. How soon after the executive committee did Mr. Thomas leave for Marlboro?

Mr. THOMAS: You mean how soon after the meeting?

Mr. MERILLAT: After the executive committee meeting; yes, sir.

A. Sometime after ten o'clock.

Q. Did he leave that same day? A. I think so; yes, sir.

Q. Now, Doctor, you stated in your direct examination that Mr. Thomas left the day after the executive committee had held their session and decided on the purchase. Is that correct? A. If I re-

member the testimony I gave in the direct examination it said Thursday, and the next day I went down there, if I can remember right, but if I did not testify that way it was because I was confused as to whether there was an intervening day or not, but I have satisfied myself now that it was on Thursday that I was at the Ball house and on Friday morning we sent Mr. Thomas down there and, if so, the meeting was called Friday morning and the matter was settled; the checks were drawn; I went to the bank with the four hundred dollar check from the company to me and deposited it to my credit and had the check of five hundred dollars, that is my own check, certified by the bank cashier; carried it back to the office; it was given to Mr. Thomas and Mr. Thomas went on to Marlboro and finished up the matter.

385 Q. Mr. Thomas drove there, I believe? A. Mr. Thomas drove there; yes, sir. He was out getting a team while I was having the check certified.

Q. Did you exhibit to Dr. Griffith any authority from the oil company to act for it in the matter of this purchase? A. Nothing more than the introduction of myself to him as the president of the Maryland Oil and Development Company and as to his knowledge that I was the president of the Maryland Oil and Development Company and to the statements that I was acting for the Maryland Oil and Development Company.

Q. Did he either ask or did you give him any authority or show him any authority whereby you were authorized to make this purchase for the company? A. I did not.

Q. Is it not a fact, Doctor, that in these leases which you or Leapley, or both together, negotiated, that they were taken in the name of the company? A. They were.

Q. And those dealings that you have described as having had personally in Prince George's County, were not they, the contracts, made and the titles taken in your own name personally? A. They were.

Q. Now, have you had any dealings in Prince George's County other than these three tracts that you have mentioned around in this neighborhood at any rate—the three tracts being the Richardson and——  
386 A. I had an option on the Hinchman farm adjoining one of my farms or two of them—adjoining two of them, which option was forfeited and was perfectly satisfactory to Mr. Hinchman.

Q. That was taken in your name, wasn't it? A. Yes, sir.

Q. I will ask you whether or not that was not taken by deed dated April 15th, 1903, and recorded April 23rd, whereby for a payment of one hundred dollars you acquired, to use the language of the instrument, to have a negotiable option for ninety days at thirty-two hundred dollars and to forfeit one hundred dollars if not paid in ninety days, and two hundred dollars for an extension for five months from this day, the acreage being 64 acres, part of the Calvert estate.

Mr. THOMAS: Now, I object to this testimony, if it be material, unless the paper attempted to be recited from in the question is produced.

Mr. MERILLAT: I call on the witness to produce the paper in question.

Mr. THOMAS: I object to the call of counsel on the witness to produce the paper. I do not assume that Dr. Stewart carries the paper in his pocket.

Mr. MERILLAT: I then give notice to the defence to produce the Hinchman option, stating that if it is not produced I will from the records of Prince George's County produce the same.

Mr. THOMAS: Doctor, have you got this option?

387 WITNESS: I have it at home.

Mr. THOMAS: The paper will be produced.

Mr. MERILLAT: I may say that the only part that I desire as material is that part which describes the option and specifically so designates the contract.

Mr. THOMAS: May I inquire of counsel for Dr. Griffith whether he has any more letters written by Dr. Stewart to Dr. Griffith, my object being to get all the correspondence between the parties on the record.

Mr. MERILLAT: I will say that I have renewed suggestions made not once but several times to Dr. Griffith to produce every scrap of correspondence that he has. After a diligent search we have produced everything that we have. If others can be had we will produce them. In that connection there was a call made for the bank book of Alfred W. Ball.

Mr. THOMAS: Book of Griffith, wasn't it?

Mr. MERILLAT: Alfred W. Ball.

Mr. THOMAS: Yes, sir.

Mr. MERILLAT: I would like to know about the other matter.

Mr. THOMAS: The book of deposit with the Citizens National Bank of Laurel, Maryland, the account of Alfred W. Ball, being produced shows that on the 18th of June, 1903, there was deposited three hundred dollars to his credit. The check produced by counsel shows that L. A. Griffith, executor of A. W. Ball, drew his check  
388 it and deposited it to the credit of L. A. Griffith, executor of A. W. Ball. This check appears on the book at the balancing of the account in the bank.

Mr. MERILLAT: I would like counsel to state, if they can, what action they desire to take with reference to the sworn statement.

Mr. THOMAS: I will agree that Mr. G. W. Waters, cashier, if he were present would testify to that statement, and I am willing that that shall be incorporated in the record.

Said paper is marked for identification as defendant's exhibit W. W. S. No. 19 and is in words and figures following, to wit:

The Citizens' National Bank of Laurel.

LAUREL, MARYLAND, Dec. 20th, 1904.

Dr. L. A. Griffith, Upper Marlboro, Md.

DEAR DOCTOR: I find by reference to the books in the bank that you deposited to your personal credit on June the 6th, 1903, a check

for \$500. on the Columbia National Bank of Washington. You requested me to have this check collected at once. On June 18th I received letter from you enclosing your personal check for \$300. requesting that same be placed to the credit of Alfred W. Ball if the \$500. check had been paid. The \$500.0- having been paid the \$300. was placed to the credit of Mr. Ball as requested. This amount remained to the credit of Alfred W. Ball until Dec. 5th, 1903, 389 when it was drawn out by you as executor and placed to the credit of L. A. Griffith, executor A. W. Ball. You also sent us a certificate from W. R. Smith, Register of Wills for Prince George's Co. showing that you had been appointed Administrator of A. W. Ball deceased.

Yours very truly,

G. W. WATERS.

Personally appeared before me G. W. Waters, Jr., cashier of the Citizens' National Bank of Laurel and made oath in due form of law that the statements in the foregoing are true to the best of his knowledge and belief.

Witness my hand and notarial seal.

WOODVILLE T. ASHBY,  
*Notary Public.*

(Hereupon the last above question asked was re-read.)

A. That was a matter that was entirely my own and is as nearly correct as I can remember it.

Q. Did land enhance much in Prince George's County as a result of the oil excitement? I refer to the neighborhood of the oil well more particularly? A. I don't think it did.

Mr. THOMAS: I object on the ground that counsel has been over this matter several times.

Mr. MERILLAT: I have not asked this witness a question about that, Mr. Thomas.

Q. Doctor, didn't you in the autumn request Dr. Griffith to delay pressing the matter of the consummation of the sale and the survey until after the right of the oil company to take this land from you had expired? The date being somewhere in the early part, 390 as near as I can put it, of October. A. I don't remember of any such conversation.

Q. When Mr. Ambrose and Dr. Griffith called on you in December, did they say to you, or did they make a tender to you of a deed and a mortgage to this tract and say they had the Court's order authorizing the completion of the contract? A. Dr. Griffith or Mr. Ambrose, I don't know which, handed me a paper which I immediately handed over to Mr. Thomas, stating to them both that it was a matter of the Maryland Oil and Development Company alone; that I had no interest in it whatever; that it was their money and I had nothing to do with it, and Mr. Ambrose said that he did not care who it was. That was the only conversation that I had with those gentlemen that day.

Q. Didn't you say to one or both of them that you were ready to comply when a good title was given? A. I emphatically and positively say I did not talk to them after making the aforesaid conversation. I made up my mind to it before I went in there. I had nothing to do with it.

Q. Didn't Mr. Ambrose then suggest that you could get an examiner and they could get one and go over the title and that his client would abide by the result? A. The conversation was held with Mr. Thomas, I taking no part in it.

Q. Did you say after November 7th that you were going  
391 to make Griffith refund the five hundred dollars? A. No, sir.

Q. Mr. Ambrose says that in that conversation you referred to Mr. Thomas as your attorney. Is that correct? A. Absolutely untrue.

Mr. THOMAS: I object. The witness has already contradicted Mr. Ambrose.

Q. Did you say to Mr. Ambrose that you did not consider any forfeiture had been suffered and that you wanted the land and otherwise you would not have gone into the question of title so closely?

Mr. THOMAS: I object to that because the witness has been asked about that several times and has already answered in the negative.

Mr. MERILLAT: The only question asked was one generally. I now ask it specifically.

Mr. THOMAS: He contradicted it fully.

A. I just as emphatically say, no, sir.

Mr. MERILLAT: That is all.

DR. WILLIAM W. STEWART.

JANUARY 9, 1905.

Redirect examination.

By Mr. THOMAS:

Q. Please give me a description of the Berry tract of land that you purchased about the latter part of 1901? A. That was purchased I think in the spring of 1902. The Berry tract of land consists of 76 acres, more or less, located on the road leading to Washington and a road leading from Centerville to Red's Corner. It has one new house and barn; one old house and barn on it. It has a fine peach orchard, new trees bearing. It has about three acres of strawberries. I don't know how many acres of raspberries.

Q. How about woodland? A. And some apple trees besides peach trees. Apple and pear trees.

392 Q. How about woodland? A. I think there are forty acres tillable.

Mr. MERILLAT: I move to strike all of this evidence out and also similar evidence as immaterial and irrelevant.

A. The rest of it is in woodland.



Mr. THOMAS: If counsel will admit that all the evidence respecting the condition and price of the Berry tract and other tracts than the tract in controversy in this case is immaterial I will agree to strike all the testimony out relating to it. I think all of it is immaterial, but I am obliged to meet it because counsel has asked about it. What do you say to that?

Mr. MERILLAT: To assent to counsel's statement would require counsel for the defendant to admit that all testimony which they actuated with respect to the value of the Ball tract is likewise immaterial, there being no evidence of fraud, counsel will admit the one if the opposition will concede the other.

Mr. THOMAS: I don't think that the result follows. I, therefore, will have to go on in view of the refusal of counsel to eliminate from the record the condition of the other properties than the one in controversy and the value thereof.

Q. Please describe the Wilson tract? A. The E. G. Wilson tract consisted of 168 acres located on two direct roads to Washington. They parallel the tract on each side. It is covered with timber and wood; over ninety per cent. marketable.

393 Q. Have you sold any wood off this tract within the two years? A. Yes, sir, I have sold over seven hundred dollars' worth of wood in two years.

Q. How about the quantity left? A. There is a great quantity left. The tract was purchased in the spring of 1902.

Q. How about the Richardson tract? A. The Richardson tract consists of 140 acres of land, more or less. It has two houses upon the property in good condition and two barns; some very good timber land on it that has not been touched; the rest of it is tillable. The farm can be divided into two farms, it having houses practically for each farm. In conclusion all of these tracts—the three different tracts—are located nearer Washington than either the Ball tract or the Maryland Oil and Development Company's tracts.

Q. A call has been made for the Hinchman contract, have you got that, Doctor?

(Hereupon the witness produces the contract and hands same to counsel.)

Q. Did you draw that yourself? A. I think I did, as far as I can recollect. It was copied from a draft I made. You see I did not typewrite it.

Q. Now, these pieces of property; the Berry tract, the Wilson tract and the Richardson tract, are they profitable investments, and what are their value? A. Well, they are not very profitable. They

394 are not profitable at all, I might say.

Q. Are they worth the money you paid for them? A. No, sir.

Q. Now, you have been asked here whether you were what is termed a speculator. Have you got to say about that? A. I am not a speculator in the natural sense of the word. I have been nothing but a pure business man. Every one in a sense is a speculator in taking chances in business matters, but I have always worked, been honest, industrious and made my business transactions successful.

Q. Is the Maryland Oil and Development Company solvent? A. The Maryland Oil and Development Company is solvent.

Mr. MERILLAT: I object to that. The witness is not an expert. The question of its solvency is one that hardly could be testified to by the witness.

Q. Has it any debts? A. It has debts, but it has always met its interests and paid its taxes and all the debts it has incurred.

Q. Has it any secured debts? A. Yes, sir, the debts on the land are secured by mortgage.

Q. Is there any considerable indebtedness outside of that? A. None.

Mr. MERILLAT: I further object and move to strike out  
395 all this evidence on the ground that the financial status of the Maryland Oil and Development Company cannot affect the contract between the witness and Dr. Griffith.

Q. What have you to say about the difference in the price mentioned by Dr. Griffith of ten thousand dollars mentioned at his house at Marlboro and forty dollars per acre fixed by you and Dr. Griffith at the Ball house? A. In the conversation at the house of Dr. Griffith, he merely said that he understood that the price was, or that the Balls wanted ten thousand dollars. When we got to the Ball house and after he had conferred with the Balls he came out and said that the Balls wanted forty dollars an acre, and, of course, I accepted the proposition at that.

Q. You have testified that the contract and other papers of the Maryland Oil and Development Company were in your safe, the contract that Roberts brought up that had previously been signed by Dr. Griffith about the 5th of June, among others. Why and how did those papers come to be in your safe? A. From the fact that the Maryland Oil and Development Company did not have a safe of their own and as that contract was not put on record, and was not intended to be put on record for sometime, and if it should be lost might cause some inconvenience, so they decided that it should go into my safe with the rest of the papers that were in there then. I kept the stock book and the stock certificates in my  
safe with some contracts and other matters that we had.

396 Q. A paper has been produced dated the 19th of June, 1903, purporting to be signed by Alfred W. Ball and offered in evidence as a ratification of the sale made by Dr. Griffith to which you are a party. Will you be kind enough to state when you first had any knowledge of this alleged ratification of this contract to convey the property by November 7th, 1903?

Mr. MERILLAT: I object to that as irrelevant, immaterial and incompetent.

A. The first knowledge I had that there was a ratification of that contract by Alfred W. Ball was when Dr. Griffith presented it here in evidence while this case was on trial before the Master and never before.

Q. Counsel refers to the bill, paragraph 6th, as showing that the

alleged ratification was not filed, and to the opinion of Judge Anderson on the hearing of the demurrer in this case in which he says: "It is true that in the power of attorney providing for the terms of the sale to be negotiated by Griffith thereunder, it is stated that the contract of sale in writing is to be signed by Ball, but, certainly, whatever may be the evidential value of that instrument as bearing upon the probability of Ball having orally ratified the sale upon different terms negotiated by Griffith, it still must be said as a matter of law that he had the power to verbally ratify such sale."

Mr. MERILLAT: I move to strike out counsel's self serving and argumentative expression on the record.

Q. (continued). Did you know prior to the testimony  
397 in this case that there had been any arrangement between Griffith, as the agent of Ball, to pay out of his commissions half of the cost of surveying and if you did not pay the other half that Ball was to pay the cost of surveying and attorney's fees? A. No, sir.

Mr. MERILLAT: At this point I object to all statements of the witness counter to the statements in the contract of sale signed by the witness.

Mr. THOMAS: Counsel for the defendant Stewart refers to the alleged ratification of June 19, 1903, for the purpose of showing that there was an understanding between Ball and Griffith that the contract was an option contract.

Mr. MERILLAT: I further object to counsel's renewed argument on the record.

Q. Did Griffith explain to you why he had neglected to survey as required by this alleged ratification? A. No, sir.

Mr. THOMAS: It is admitted by counsel that the figures 150 on the last line of the first page of Exhibit A-1 filed February 15th, 1904, in this cause was changed by consent of counsel by adding the naught to make it read *one hundred and fifty* instead of *fifteen* as it read at the time the bill was filed and the demurrer was heard. In that connection I refer to the opinion of the Court on the demurrer wherein the Court says: "Instead of the sale being agreed to be consummated within ten days from the date of the signing of the contract."

398 Mr. MERILLAT: Counsel moves to strike out the argument on the record and as to the *one hundred and fifty days* says that the leaving out of a naught was a mere clerical error, and I further object to all of this as improper redirect examination.

Recross-examination.

By Mr. MERRILAT:

Q. Doctor, don't these three farms that you have adjoin the Ball tract? A. No, sir, there is a road dividing between them—between that and the Berry tract.

Q. Then it is simply across the road from the other? A. The Berry tract is across the road from the Ball tract.

Q. How near are the Wilson and this other tract to the Ball tract? Do they abut on the Ball tract? A. No, sir, the Richardson tract is, I should say, nearly half a mile away from it. That has a road leading into it from the road going to Washington.

Q. Do you know as a matter of fact, Doctor, whether parts of the Richardson farm impinges on a part of the Ball farm? A. None of them abut on the Ball farm. The E. G. Wilson tract lies some distance away. There is a twenty-seven acre tract between the Wilson tract and the road. It is off to one side of the Ball tract.

399 Q. Is the Ball tract also on that same road, part of it that you have reference to now? A. No, sir, it is not on that. The roads that the Wilson tract is on are both leading to Washington. The road that the Ball tract abuts is the road leading to Centerville and Red's Corner.

Q. The Ball tract is very near the Marlboro and Washington Pike, is it not? A. I think it is a good quarter of a mile away from the Marlboro Pike.

Mr. MERRILLAT: I desire to offer in evidence the agreement between William H. Hinchman and Melissa C. Hinchman and William W. Stewart produced by the defendant on call and ask the Examiner to mark the same for identification, and the same to be read at the trial.

Said paper is marked for identification (offered by the counsel for the complainant and on his behalf) as exhibit W. W. S. No. 20.

Mr. THOMAS: We object on the ground that it is immaterial to consider the terms of any other contract than the one in question in this case, and in order to show that contracts of purchase were made by Dr. Stewart in different form from the one in the case at bar I offer herewith a contract in the Berry case to be filed with the Examiner as defendant's Exhibit W. W. S. No. 21.

By Mr. THOMAS:

400 Q. Dr. Stewart, is that the contract just offered in the Berry case? A. Yes, sir, that is the contract I entered into with the Berry people.

By Mr. MERRILLAT:

Q. Doctor, there are certain interlineations made here in this Hinchman agreement. I would like to ask you whether or not you made those interlineations with a view to adapting it to the Ball purchase until you found that they would not sell an option? A. Those interlineations were made for an entirely different purpose, and had no connection with the Ball matter whatever. The Ball option was written entirely by Mr. Thomas, the attorney for the Maryland Oil and Development Company.

Q. You carefully examined, did you not, the agreement that you signed, at least so far as concerns the option agreement, or what you claim to be the option agreement drafted by Mr. Thomas?

Mr. THOMAS: I object. Does counsel think this is re-cross examination? I do not.

A. As I testified before I hurriedly glanced over the contract that morning; looked at the option clause in the end of the contract and signed it, thinking that it was perfect in every respect as an option contract, or else I would not have signed it.

WASHINGTON, D. C., January 11th, 1905—  
Wednesday, at 3:30.

*Testimony for the Defendant.*

FREDERICK BRIGGS.

By Mr. THOMAS:

I have resided in the District of Columbia about twenty-  
401 two years.

I am a dealer in meats in the Center Market. I have been engaged in that business in the Center Market for twenty years. I was connected with the Maryland Oil and Development Co. In June, 1903, I was a director and member of the executive committee of the company.

On the evening of March 4th, we decided to lease the adjoining lands, and we had in view this Ball place from that time. After some time we were not able to get a lease and finally it was suggested that we might get an option and Dr. Stewart reported that he thought we could get an option for about \$250, and we authorized him to go ahead and get it. He went down there for that purpose and came back and said that it could not be had for less than \$500 and for five months and we decided to take it. The company at the time had \$400 in the treasury and being \$100 short Dr. Stewart advanced the \$100 to the company and took their check for \$400 up to the bank on June 5th, 1903, and got the Maryland Oil and Development Company's check placed to his credit and drew a check for \$500 and had it certified and it was given to Mr. Thomas who was sent down to obtain the option.

Mr. Merillat objects on previous grounds.

I am speaking of Mr. A. W. Thomas.

Mr. MERILLAT: I would like to ask witness a question for the purpose of developing whether or not the witness is testifying from his own independent recollection or from conversations he has recently had with the parties or from any data that he has seen.

402 WITNESS: I will answer him: what I state in this matter is my own knowledge, I being present on the occasion and knowing all about it, anything that is hearsay, before I testify to it, I will say so.

In reference to the report that Dr. Stewart made that it would take so much money to get an option for five months, and in answer to the question whether any meeting was called and whether that report was spread before any committee of the Maryland Oil and Development Co. and if so, when the meeting was called; who attended it and whether it was put before the company, I have to say that on

June 4th in the evening, I don't remember what time, I was notified to come to the Stewart Building to a meeting there and I came down. Dr. Stewart had returned from the country and he stated that the best he could do was to get an option for five months for \$500 on the Ball tract of land, and it was talked over and we decided to meet the next morning on the 5th of June, and I was there; R. C. Baughman, Dr. Stewart, Mr. A. W. Thomas were all there. This matter was brought up and the amount of money in bank was determined, \$400, and Dr. Stewart offered to advance to the company \$100, which he did, and then a check was made out to him for \$400 by the Maryland Oil and Development Co. I was there and saw the check and saw it made out. Then he went to the bank and got a certified check and sent it to Marlboro, and there was a letter of introduction drafted, I don't know who by, which he signed and it was given to Mr. Thomas with the certified check, the check to Dr. Griffith, and that ended

our meeting and I returned to the market. The evening previous on June 4th, A. W. Thomas, Mr. R. C. Baughman, Dr.

403 Stewart, myself and Capt. Lucas were present at Dr. Stewart's office on his return from Marlboro. At that time Dr. Stewart, R. C. Baughman, and myself, Mr. Thomas, Secretary composed the executive committee of the Maryland Oil and Development Co. At that time Lucas was the manager of the development — out there. I don't know who notified me to come to the office of the Maryland Oil and Development Co. on these two occasions. I was called by telephone. Who it was I don't know. I recollect that there was a separation for the purpose of procuring a vehicle in the morning of June the fifth at the time these papers were being prepared—these checks were being made: Mr. Thomas was told to go and engaged a team so that he might take this matter right down there.

I have no papers showing any payment at that time by Thomas for the liveryman. On July 14th I was elected treasurer and on July 20 I paid Mr. Burgdorf this bill, which included that trip on the 5th.

The bill is offered in evidence marked defendant's exhibit W. W. S. 22.

Mr. Merillat objects that it is incompetent and irrelevant.

Q. When was it and how *it was* that Dr. Stewart's name was introduced into the option or contract for the Ball tract? A. Why it was some little time before we finally got the option. There were several names presented to the committee. My name was presented for one and Mr. Thomas, and finally it was decided to have it in Dr. Stewart's name. He was president of the company and a man of means and perfectly reliable and we decided that it would be better to put it in his name. You might say that the Doctor objected somewhat but finally consented to it. Dr. Stewart had no private interests in the purchase of this property outside of the interests disclosed by me in my testimony to-day. Every dollar of the expense was stood by the Maryland Oil and Development Co. This advance was repaid to him by me as treasurer of the company on July 16th, with other advances amounting to \$206.74.



When Mr. A. W. Thomas was given this check and instructed to go to Marlboro to see Dr. Griffith he was acting for the Maryland Oil and Development Co.

Objected to by Mr. Merillat & motion to strike out the foregoing.

405 Cross-examination:

Argument of counsel.

At the present time I am a stockholder in the Maryland Oil and Development Co. in as large an extent as I ever was. I have all my interests intact. My interest at the present time is seven hundred and eighty some odd shares, par \$5.00. I was one of the original syndicate that bought these lands.

Mr. THOMAS: Objects to any inquiry about other lands than the Ball tract.

I could not tell without looking it up what price was paid by the purchaser of the land subsequently turned over to the Maryland Oil and Development Co. for those lands. There were various prices running all the way from probably—I could not give you exactly—from \$10, an acre all the way up as high probably, as \$50.00. The connection which Dr. Stewart had with the acquisition of those lands was that Dr. Stewart was about the fourth or fifth one that became interested in this proposition out here, and he acquired from A. R. Lendner; that is he advanced him \$2,000, which was given when the syndicate was formed and others issued—was given shares at the rate of \$200 per share. The par value was \$500 a share for the syndicate.

Argument of counsel.

When the land was turned over by the syndicate to the oil company Dr. Stewart had an interest in the land.

As to the amount I will have to go to the beginning in order to show that. In the beginning originally there were 286 acres in which I was a half owner and the other one was A. R. Lendner known as the Lendner tract. We made this discovery and then bought the adjoining lands amounting to something over a thousand acres—eleven hundred or a thousand or something like that. One-fifth of his interest amounted to, when the syndicate was formed—the capitalization was one hundred thousand dollars, at par. \$150,000 of shares in the treasury and \$75,000 of shares was Lendner's half and \$75,000 was mine. Dr. Stewart got one-fifth of his

406 interest.—Lendner's interest.

The capitalization was \$100,000 that was the syndicate. Later on, the Maryland Oil and Development Co. was formed, and the capitalization increased to \$150,000, and this additional increase was placed in the treasury. I could not say exactly what the total price paid by the purchasers of the land turned over to the Maryland Oil and Development Co. was. It was something like \$20.00 an acre on the average.

It was about 1000 acres 1011 more or less; it was turned into this syndicate. I don't know how you would put that. The owners of

the land received \$50,000 worth of stock, \$50,000 remaining in the treasury, being placed in the treasury.

That subsequently when the company was organized, it was increased to \$150,000, but the increase was placed in the treasury, so it benefited the holders nothing, except adding that much more to the treasury. Some of the stock was sold off for development work out there before the Maryland Oil and Development Co. was formed. I could not say whether disclosure was made to the persons who were sought to be interested in the Maryland Oil and Development Co. as to the price paid for the land and that the organizers of the Company were personally interested in the land. I could say yes and no; whenever they asked they found out. I could not state the prices that were paid to the various persons from whom I acquired land.

I could give the dates of these transactions with reference to the Ball transaction from memory. From the fourth of March, 1903, and the 4th and 5th of June, 1903, from time to time as treasurer of the Maryland Oil and Development Co. I have noticed the number of dates carefully, and so I keep the fact in my memory that it was on that particular day that these several transactions to which I refer took place.

As to the transaction of June 4th, the call for the meeting of the executive committee, I was called by telephone. I had a telephone in my house at the time. I remember going down there very distinctly and also the next morning.

407 In reply to your question as to what there was about that meeting that should cause me in my memory to recollect the fact that it was on June 4th rather than any other particular day, that that meeting occurred, I say that it was a right important transaction and I was somewhat opposed to it, being a tremendous price to be paying for that land and I registered my kick at the time, but I finally agreed with them. Not only that, it was the only option that we have got and I noticed it particularly and I remember distinctly. I have already some records of the dates that have been given in this inquiry, as treasurer of the Maryland Oil and Development Co. I paid the Maryland Oil and Development's Co. money that was spent upon this date, consequently it is my business to know something about these dates.

I was treasurer of the Maryland Oil and Development Co. from July 14th. On July 16th I paid the Bill of \$206.74, which included \$100 that was advanced on June 5th to make up this \$500 for this Ball option. I don't know of any other reason to give why I should remember those dates as being June 4th and 5th than I have now given.

I was personally interested in the land that went into the Maryland Oil and Development Co., or in the purchase of those lands.

In reply to your inquiry as to whether I am still unable to recall the prices paid, I say that there were a number of different tracts and they were bought by A. R. Lendner.

I have bought land and was familiar with the prices that were paid and was a party to the transaction, and say that there were

different prices. I have had transactions in the purchase of land with Dr. Griffith, the complainant in this case. He did at one time threaten me with a suit, if I did not pay up as I agreed to.

Argument as to the following question by counsel.

Argument continued.

Hereupon the following question was read to the witness: Dr.

Stewart has testified that the call for the meeting of the executive committee was not issued by him until the morning after the return from Centerville and Upper Marlboro where he went to buy the Ball land. Is Dr. Stewart correct in that statement. I will add to that question as read, whether or not Dr. Stewart's statement on that point tends to refresh your recollection that it was in the morning and not the evening that you received the call for a meeting of the executive committee?

Argument by counsel.

I am dependent upon my own memory. I am giving it from my own memory. I did not say that I gave fifty dollars an acre for any land. It ran all the way probably from ten to fifty dollars. I don't know exactly. I could not tell without looking it up.

I could not say of any other land there for which I paid fifty dollars an acre. I think there is a place there of seventy two acres. I think we paid about sixteen hundred dollars for it to the best of my recollection.

A party by the name of Gardus was the owner of that land. It was either fifteen or sixteen hundred dollars. I think there is something like seventy acres.

I could not tell you now without looking it up from whom we bought any land for which we paid an excess of thirty dollars an acre. They run different prices.

In reply to your question as to whether or not Mr. Gardus got the highest price for his land than any of them, I say that I remember that distinctly. There was one place there I don't know what it cost, although I was an owner in it. I never have found out what it cost.

I could not say that this tract of seventy-two acres was the highest price that was paid for any tract of the land which I bought aside from this tract which I say I do not know what it cost, although I was one of the parties to it. I can tell you as many as I remember of them and the prices that were paid. One place of one hundred acres was fourteen hundred dollars; from a party by the name of Osborne.

That is all the purchases I remember of now, the exact amount. That is the best I can do on this point at the present time from memory.

I looked over some bills the others day of the Maryland Oil and Development Co. with reference to the Ball tract. This week, Monday. In reply to your question as to when I last looked over any records of the Maryland Oil and Development Co. with reference to the purchase of the Ball lands, I say that I have a book which I carry in my pocket. That refreshes my memory any time I chose

to look at it. I have looked at it to-day. I have looked at it continually, more or less, ever since I have been treasurer because I carry it with me. I will let you see that book. I have it right here with me. I will state, however, there are other things outside of this matter in there.

Mr. MERILLAT: Of course, I shall not consider that I have anything to do with your private matters, etc.

You state that you fail to find in my book any reference whatever to the dates between the middle of May and sometime in July, 1903, and you ask me whether or not there is anything in that book that tends to refresh my recollection as to the dates or events concerning this Ball transaction. I say in response thereto, that the very one that starts off, "W. W. Stewart, \$206.74," has a tendency to refresh my memory.

That is the date I think it was paid, July 16th, 1903. That refreshes my recollection as to the date when this Ball transaction occurred and the executive committee held its meeting, because \$100 of that money which I paid out there was money that was advanced by Dr. Stewart for the purpose of this option on the Ball property. July 16th is when the money was returned to him.

It is correct that that entry in the book tends to refresh my recollection of the fact that it was on June 4th and 5th that these meetings of the executive committee were held and the Ball purchase was agreed upon. There are others there besides.

410 In reply to your question as to whether the entries of date and amount apparently relating to the purchase of lands, refresh my recollection, or whether I have refreshed my recollection from them as to the prices that I paid for lands, I say that I have not looked at the book to refresh my memory about the cost of lands.

I have looked over, with Dr. Stewart and Mr. A. W. Thomas the testimony that they have given in this cause.

Yes, sir I have looked over the testimony that has heretofore been given in this cause prior to giving my testimony.

Mr. Merillat moves to strike out the witness' entire testimony.

Mr. Thomas offers in evidence the entries in the book and says he will produce the book at the hearing of this cause.

WASHINGTON, D. C., *January 14th, 1905,*  
Saturday, at 10:30 o'clock a. m.

*Testimony of George K. Flynn.*

By Mr. THOMAS:

I reside at Meadows, Prince George's County, Maryland; my age is forty years. I have lived about fourteen years, sir, near Meadows. I was personally acquainted with Alfred Ball and his brother, James Ball, during their lives.

I lived for a period of about four years adjoining the Ball tract. During the month of June and subsequently during the year 1903,

I lived about a quarter of a mile from the Ball property. I  
411 had conversations with Alfred Ball on many occasions. I  
could not say the number of times exactly that I saw Alfred  
Ball from June to November, 1903, including June, but I have seen  
him on many occasions. In fact two or three times a week sir.

Mr. Merillat objects on ground testimony with reference to conversations with a dead man was incompetent under the code.

Mr. Thomas consents to the objection being considered as applied to all such testimony.

I could not say exactly that it was in the month of June or not, but along between July and August I had a conversation with Ball regarding the tract that he owned there.

He said that he had disposed of the tract to the oil well company and he desired to know whether they would come up with the money that had been paid—that is, the full amount of money at a certain date. He said that a certain amount had been paid to him, but if they did not come up a certain day he would consider it no sale. That was his words. Appear like I would consider it no sale. That was an expression that he had.

On several occasions he stated that Dr. Griffith had some—Dr. Griffith had gone back on him. He had been attending to his business and Dr. Griffith had gone back on him and he was tired of sending to him for five or ten dollars, and that he was going down and get all of his money.

He did not state the exact amount Dr. Griffith had of his, but I heard from other parties.

412 Cross-examination:

I am a painter by occupation; house painter, aside from that I sometimes follow stenography. And anything at all that comes in my way for making a living. I am also a barber.

I do not own any land down there in Prince George's County. I now live at Meadows, Prince George's County, Md. with my wife.

Ball didn't want to know from me exactly whether they would not come up with the money, but he wanted to know if I thought that the oil company would come up. I had no dealings with the oil company so that I would know anything about it.

I came here as a witness at the request of Mr. Leapley, sir. Nothing was given me for appearing.

This conversation at which Ball said to me that Dr. Griffith had some of his money, was as near as I can recollect, like this:—He told me that Dr. Griffith had some money of his and that he did not think that Dr. Griffith was attending to his business in a proper manner and that he was tired of sending to Dr. Griffith for five or ten dollars occasionally and he thought he would get all of his money at once.

According to what he said he had actually sent to Dr. Griffith for five or ten dollars at various times. He did not say whether Griffith had sent it to him or not, but according to his conversation I should judge that he had. I judge that Dr. Griffith had sent him five or ten dollars at various times.

413 In other words he told me that he had sent to Dr. Griffith at various times for sums of five or ten dollars and that Dr. Griffith had sent him up the money that he had sent for. That is the way I understand it. But he wanted to get it all at once and was going for it.

Redirect examination:

He told me, that with the money he was going to get from Dr. Griffith, he was going to purchase a piece of property adjacent to Mr. Pumphrey's and erect a house on there that would cost about a thousand dollars.

I said that I did not understand from him the amount, but from others.

ELISHA B. FERGUSON.

By Mr. THOMAS:

I reside in Prince George's County, near Meadows, sir. I have lived there about twenty-eight or thirty years. I was born in '59, the 17th of July, sir. I was well acquainted with Alfred Ball in his life time.

In the Summer of 1903 I had a conversation with Alfred Ball respecting the disposition of his property known as the Ball tract.

Mr. Merillat objects.

He used to come over to Meadows there and get his mail and I used to see him over there often and he seemed like he was always fond of me and liked to get talking with me, and he used to get a talking about the oil company. I used to work a little over  
414 there to the company, a few days over there.

There is a store there where we would have talks. The grocery store there; Mr. Pumphrey's grocery store and postoffice there.

He said that the oil company expected to strike oil there and he reckoned and asked me what I thought of it and I said, "Mr. Ball, I could not tell you, I would- know when they struck oil from anything else, only from what they would tell me about it." He said, "well," he had a great word he used "appear like." He said, "appear like the time is drawing pretty close." He said "the 7th of November will soon be here." I said, "Yes sir." He said, "appear like they have got to come up on that day. If the company didn't come up on that day, appear like I wouldn't give them three minutes after that day. They have got to settle on that day or I would not give them three minutes longer." I said, "Mr. Ball, if that is all I would give them ten minutes." He said, "This company you cannot tell how they are." He said, "I would like to see them hit oil." I said, "I know I would."

Well, yes, sir, I had a conversation with Ball during that  
415 summer, 1903, with reference to Dr. Griffith. I don't think that has got anything to do with this matter. That does not concern this at all. I don't think I have got a right to say anything about that at all, sir. It doesn't concern this at all.



## Cross-examination.

By Mr. MERILLAT:

I don't think that the conversation that I had with Mr. Ball concerning Dr. Griffith has got anything to do with this at all. If the Doctor wishes me to say so I can. I don't care to say anything.

Dr. GRIFFITH: Certainly sir: Go ahead and say it.

I don't know the date at all. I didn't even know what date it was, but I know it was in hot weather and we were sitting out there in the shade of a tree. He asked me one day, he said, what are you doing with your horse now, anything particular? I said, "Well, Mr. Ball, I am marketing with him." He said "why," he says, "I would like to get you to take me down to Marlboro one day." I said, "I guess I could do that." He said, "I don't want you to carry me down there for nothing. I am able to pay you for it. I haven't got anybody but myself. I want you to take me down there and I want to see Joe Wilson. They tell me he is a good lawyer. They tell me he is a good lawyer." Then he asked me if I thought he was a good lawyer and I said, "yes, sir, I think so." He says, "I want to go down there one day to see him." He says, "It appear like I am going to take my business out of Dr. Griffith's hands." I says, "you are?" He says, "yes, sir." He says, "appear like he is not treating me right." He says, "I am going to take it out of his hands and give it to Joe Wilson." He says, "Don't you think I better give it to Joe Wilson?" I said, "I could not tell you anything at all about that. You will have to settle that part yourself. I haven't got any right to think for you. You might think one way and I might think another." I says, "Dr. Griffith seems to be a good level-headed man." He says, "I don't like the way he is doing. It appear like he is trying to rascal me." I said, "Oh, no, sir, I reckon not." He says, "I know a heap that you don't know." I said, "Maybe you do." I think that was about all that was said.

By Mr. THOMAS:

He never said anything about money to me. Not a word about it.

By Mr. MERILLAT:

He did not say to me why or how Dr. Griffith had not treated him right, or how he was trying to rascal him, no more than what I told you in the beginning. He never said that he was trying to rascal him out of it, or what he was doing him out of, but it would appear like he was trying to do him dirty and rascal him and he was going to take his business out of his hands, but he did not say what for, or what the Doctor had done or anything about it. This conversation occurred right under an oak tree; right across the road from Everett Pumphrey's drinking saloon. Indeed I could not fix the date of that conversation. There was no one else present, just him and I sitting out there. He came around to the store for his mail and I was keeping the place for Pumphrey that day—he

had come to town—and he came up there and there was a bench right under the maple tree in the yard and sun began to shine on that a little—then he said “have you got a little cold water in there?” I said, “Mr. Ball, no, sir, it is not very cold, but I will get some fresh water for you.” He said, “Never mind. Have you got a little good whiskey?” I said, “Yes, sir, there is some whiskey up there?” and I gave him a little. I handed him up the bottle and gave him a glass and he poured out a little, enough to cover the bottom of the glass and he taken that and walked out and sat down and he said, “I believe we are sitting right in the sun here.” I said, “Yes, sir,” and we walked across and sat in the shade. That conversation concerning Dr. Griffith did not last very long.

No sir, we did not go into particulars as to how Dr. Griffith had done him dirty, because I didn't want to interfere in his business. He didn't say what it was about; nothing, only he wanted me to take him down to Marlboro one day. But I did not take him down for he said he would let me know when he would want me to take him down and he never did let me know.

417 Now I could not really say whether that was as early as July or not. I know it was warm weather. It was in the summer season, but what part of the summer season I do not know.

Mr MERILLAT asks: Was there considerable conversation about the country stores and at other places where people met concerning the oil company buying up considerable land, or acquiring in any way interests in considerable land down and around Meadows?

Objection by Mr. Thomas, and argument.

Well, sometimes, I would be around the postoffice and hear them saying something about the oil. Just one kidding another. It was more kidding than anything else. Mr. Jim Ball was a very positive man. Mr. Alfred Ball was not so positive. He was a lenient kind of a man.

In answer to the question as to whether or not there was not considerable talk in the community which came to my ears, about the oil company having large interests and buying up various lands around there, I say that I would hear it sometime.

Objected to by Mr. Thomas.

I cannot say I heard much talk in the community to the effect that various people, Mr. Leapley and other persons, were representing the oil company in the land transactions that occurred.

Mr. Thomas objects.

I heard sometimes speaking about Mr. Leapley working *pr* doing something for the oil company now and then. Can't say so regularly. It was not an every day occurrence or every week either. Mr. Otho Pumphrey, who is the owner of this store where my conversation with Ball occurred in reference to the company having bought the land, was not present when that conversation occurred. No one else was present. Well, he spoke to me several times about the company—about the oil company and how they were getting along, or did I hear, etc. I would tell him, “No sir, I haven't heard

anything." He would say, "I guess you have heard the latest." I would say, "I haven't heard anything for a week or so." As to who was present at any of these conversations, on one or two occasions, when Ball said what he did to me, I say that I don't know if he didn't tell most of the people around there. Everett Pumphrey was present when he used to talk about it. As an occupation I farm a little at home. I work about sometimes and do carpenter work and sometimes painting. First one thing and then another.

I do not own any property myself personally in Prince George's County, Maryland.

Redirect examination.

By Mr. THOMAS:

My wife owns some property.

By Mr. MERILLAT:

I don't know that the number of acres and what I value her property at has got anything to do with this case.

Objected to by Mr. Thomas.

She owns twenty acres. I hardly know what to say about the value of it. I know what it was assessed at. It is about a mile from the Ball property. Well, no sir, I could not say it was worth thirty dollars an acre.

By Mr. THOMAS:

It is assessed at fifteen dollars. I think it is fifteen dollars an acre. That is what I paid for it. I bought eleven acres on to it. My wife bought eleven acres on to it. It is on the pike leading to Washington. It is a little farther away from here than the Ball tract. It is about a mile below. I could not really say when it was bought;—about nine or ten years ago. Comparing it with the Ball property, that property is the better property. I mean by that, my property.

419 By Mr. MERILLAT:

This tract came to my wife from her father. Those eleven acres that my wife or I subsequently bought, is not back from the road. As to how much of those eleven acres front on the pike, I say it runs in a narrow strip from the back end of the place to the road. I suppose it has about forty five frontage on the pike—forty or somewhere along there.

By Mr. THOMAS:

I think besides this there is about one hundred yards or more of the tract itself which fronts on the pike.

By Mr. MERILLAT:

In reply to your question as to whether or not that eleven acre tract is not covered with small cut off pine—grub from small pine

trees, I say that some of it is pretty clear and some of it is pine. When I bought it, in the front it was pine and the back end it was clear.

419½ Court of Appeals of the District of Columbia.

— Term.

No. —.

LEWIS A. GRIFFITH, Appellant,

vs.

WILLIAM W. STEWART.

Volume No. II.

420

JAMES HERRISON.

By Mr. THOMAS:

I am about forty-five, I believe, residence, Prince George's County, Maryland.

I was not personally acquainted with Alfred Ball in his life time; I knew the man when I saw him around Centerville; I never was at his place until the day he was buried. I believe I was a pallbearer. In his lifetime in the Summer of 1903, I had no talk personally with him. I heard him talking around Centerville. I did not hear him say anything about the disposition of his property.

I heard him say there in Otho Pumphrey's store when several others and I were up there & I was up there buying some little things and I heard him say he had sold his land but he did not say who to. He said he had sold his land and they had given him \$500 on it. In reference to the party taking it or not he said he had the \$500 and if they did not take it he had it. He did not say anything as to whether he did not consider it a sale or nothing of that kind, only he had the \$500. He didn't say anything about any other. He said if they didn't take it he had the \$500.

Cross-examination.

By Mr. MERILLAT:

I own a little piece of land near Centerville in Prince George's County. I am not far from the Ball tract. I suppose probably a quarter of a mile from his home. I reckon, I don't know. It adjoins pretty close there across that road. There is a little strip of land between his and mine.

421

WASHINGTON, D. C., February 8th, 1905.

JAMES A. BRANSON.

By Mr. THOMAS:

I work at the Geological Survey and my address is number 714 12th St. S. E., this city. I knew Alfred Ball in his lifetime, and I talked with him before his death.

I talked with Alfred Ball in reference to a deal for the land known as the Ball tract of land next to where the Maryland Oil and Development Company have an oil well in Prince George's County, Maryland. I talked with him before the deal was made, and afterwards too. He told me, before this deal was made, that the company was negotiating with him for his land and that the only way that he would sell it would be on an option, or so much down and the rest payable at a certain time.

After the deal was made I had a talk with him and he told me that he had sold his land to this company on the payment of five hundred dollars and that the balance of the money, which was to be paid for the land, was to be paid at a certain time and unless it was they forfeited the five hundred dollars and the contract became void.

Cross-examination.

By Mr. MERILLAT:

At the time of this conversation I lived about a mile from this property. In the vicinity of this property.

The conversation that I had prior to the deal was sometime 422 during the month of May; it was during the Spring of 1904.

I had the conversation in May, 1904. Yes sir it was last year. In reply to your question as to whether I don't know as a matter of fact that this deal took place a year and a half ago, I say let me tell you—speaking about that, I do not know. I may have the year wrong. Of course I never taken notice of these things. I never made no note of them, but as near as I remember—

In that second conversation he said that the \$500 would be forfeited and the contract would be void unless the balance—the remainder of this money was not paid at a specified time. He said the contract would become void.

Yes sir, he used the word "void," there would be no sale, and that they would forfeit the \$500.

I am quite sure that the conversation occurred in the spring before this deal was made. I won't say positively last year.

As to how I came to be summoned in this case I say that I suppose some friend of mine had happened to know something about the case and Mr. Stewart came to see me and asked me if I knew anything about the case and he asked me if I would tell exactly what I knew about the case and I told him I would.

No, sir, I have not read any of the testimony in this case; know nothing of it. I had no interest at all in this contract; not a bit. Every time I saw Mr. Ball I would talk with him. He would talk very freely about it. He spoke to any one he met and who knew

him. Every time I met him he would have something to 423 say about this oil company. I am not positive who it was that informed Dr. Stewart.

I could not say who it was that informed Dr. Stewart that I had knowledge—some of the persons residing near my home. Some former witness that was there, I suppose. I have no positive knowledge as to how Dr. Stewart heard about it.

In reply to your question as to whether I have talked with anyone

as to the testimony that has been previously given here, I say that I know several gentlemen that came from my home here to give evidence, but as to what they gave I don't know.

No one has talked with me as to what this contract was in this case. Nobody at all, only Mr. Ball.

I do not know who have been witnesses in this case on the part of Dr. Stewart: I know of a couple of gentlemen near home that were witnesses. I heard that they were witnesses, but I am not positive whether they were or not. They were a man named Ferguson and Flynn. I have not talked with either of them about this case. Only they said they had been up here and testified regarding the case. As to what they testified to I don't know.

They did not tell me anything about any of their testimony or the questions asked them.

They did not tell me anything about this deal or this contract;— as to what it was. Neither of them related to me anything in any way. It is not true that I have talked with them, about this matter, since they gave their evidence. I knew that they had been  
424 witnesses in this case because they told me, but they did not tell me any of the evidence that had been given in this trial. They didn't mention to me any evidence given here. I had this talk with them while I was at home. Not at my house, I was in the vicinity. I don't remember where the conversation occurred. It may have been in a saloon. It was a store and saloon right there together. It may have been in either one of them.

WASHINGTON, D. C., *February 11th, 1905.*

Saturday, at 12 o'clock m.

Whereupon RENE C. BAUGHMAN, a witness produced for and on behalf of the defendant.

By Mr. THOMAS:

I am fifty years old; Newbold N. J. is my place of business. I arrived in Washington this morning. I was treasurer of the Maryland Oil and Development Co. in the month of June 1903.

These two checks which have been offered in evidence in this case, drawn on the Columbia National Bank, nos. 92 and 94 contain my genuine signature as treasurer of the Maryland — and Development Co.—Checks 92 and 94.

Objected to by Mr. Merillat.

I recall that there was a meeting of the Executive Committee of the Maryland and Development Co. one evening in the early part of June 1903, after the return of Dr. Stewart from Prince George's County, Maryland.

425 Objected to by Mr. Merillat.

The meeting occurred in the Maryland Oil and Development Co.'s office on the ground floor, at that time, of the Stewart building, and there was present Dr. Stewart, Mr. Briggs, and myself, with the secretary Mr. Thomas.

Respecting the report given and action taken respecting any contract relating to the Ball tract, the Maryland Oil and Development



Co., or the Executive Committee or the Maryland Oil and Development Co. authorized Dr. Stewart to secure leases of land in Prince George's County and Dr. Stewart reported that it was impossible to lease the Ball tract and that the only way that the control of this property could be secured was through an option, and this meeting was called to take action on that to provide ways and means to secure an option on that land, for the Maryland Oil and Development Co.

There was another meeting of the Executive Committee the next day in the afternoon. There was present Lucas, Briggs, myself and Dr. Stewart and Mr. Thomas who was always present at a meeting — the Executive Committee or the Directors.

We were devising ways and means of securing money to buy this option. We were shy of the money required and it was proposed that I pay one-fourth of it, and Lucas pay one-fourth of it, and Briggs pay one-fourth of it and Dr. Stewart pay one-fourth of it, and we finally decided to turn over to Dr. Stewart what we had in the Treasury, which was about \$400, and he individually was to

lend the extra \$100, to make up the \$500 and so we did not  
426 have to chip in \$25 apiece, and the Dr. advanced the \$100.

Mr. Thomas was authorized to go down to close the contract for the option of the company. I was there when he started off, that was the next day in the morning. That afternoon we provided the money and in the morning we got the checks certified. Mr. Thomas started off after bank had opened; it was about banking hours; I should judge around 10 o'clock. I was present in the Fall or early Winter of 1903, in the office of the Maryland Oil and Development Co., when Dr. Griffith and his attorney called.

The office had been changed then. The office had been taken up stairs and Briggs and Lucas and myself entered the office together and Mr. Thomas and Dr. Stewart were already in the office, and two gentlemen were there. Dr. Griffith was one and his attorney was another one.

In reply to your request to fix the time as near as I can when this occurred, I say that my business in the office that day was in reference to tendering Captain Lucas' resignation as president of the Company. He telephoned me to come down and I telephoned Briggs, and that is how we came down there. That was the first part of December. It was after the Doctor had sold out his dental business. I should judge it was in the first part of the month; I don't know, would not be sure about it, but it was around the first part of the month. I should not say it would be later than the 10th, but you can tell by looking on the Maryland Oil and Development Company's books because there was a record made of his resignation.

It ought to give you exactly the date of the meeting.

427 I remained in the room after Dr. Griffith and his attorney left; and while I was in the room, neither Dr. Griffith nor his attorney had any conversation with Dr. Stewart. Dr. Stewart did not go out in the hall while I was there.

These gentlemen remained just about two or three minutes after we got in there. Their interview was just about ended. Dr. Stewart, Lucas, Briggs, Mr. Thomas and myself remained in the office of the

Maryland Oil and Development Company some time after Dr. Griffith and his attorney had gone away. I could not state how long but it was some time. The question of resignation was discussed pro and con and some stock transactions was talked about and it took considerable time.

While I was there, and while the meeting was in force, I don't think Dr. Stewart vacated the chair. He was president or chairman of the executive committee and he could not leave while we had a meeting.

Cross-examination.

By Mr. MERILLAT:

Dr. Stewart was not in the chair while these gentlemen were there. Let me see, I have got to think whereabouts in the room he was. Thomas was standing up when we went in; his desk stood this way (indicating); these two gentlemen were standing talking to him, right at this desk (indicating) and Briggs and Lucas and myself stood where you would be now (indicating) and Stewart was a little to this side of Thomas, right here (indicating). The office  
428 was small, none of us could sit down you know. That is to the best of my remembrance of the situation. That was when we entered. We walked straight in;—straight on that side of the desk (indicating).

Well I don't know how far Dr. Stewart was from the door, approximately; I should judge as far as—I don't think as far as from this table to the bookcase (indicating). I should judge the room was about ten by twelve. I should judge Dr. Stewart was about ten or twelve feet from the door approximately. The two gentlemen who were calling there, Dr. Griffith and his attorney were pretty close to the door; closer than Stewart. I should judge the gentleman on the left was no more than five feet from the door. They were not in the act of leaving when I went in; they were standing up, not sitting; I should judge they stayed two or three minutes. In other words they left two or three minutes after I entered.

No sir, the conversation was not interrupted by our entrance. It went on, they were doing some talking—Mr. Thomas and this gentleman, the one on the left.

Dr. Stewart was not participating in that conversation. I don't think Dr. Stewart saw these gentlemen to the hall, who called. I am certain he did not because Lucas was going away and we called the meeting at once, and as soon as the office was vacated.

Aside from we three persons who entered, Thomas and Dr. Griffith and his attorney and Mr. Stewart, were the persons in the room when we entered.

In reply to whether or not, while we were there, anything  
429 occurred to specially direct my attention to this matter that was in progress when we entered, I say that the conversation was about title to the property.

This was just the winding up of the business. I was not there at the conversation and the only thing said that I remember was about getting the heir to sign the deed. I think that was the final

word spoken before the two visitors got into the hall. No one, to my knowledge, moved out to the hall with them.

As to whether or not there was anything about this conversation of this matter to call it especially to my attention so that you would know whether Dr. Stewart went along with them, I say that Lucas and myself were busy men, so was Briggs; he left his meat stand at the market, and had not much time to fool away at the meeting, and just as soon as these gentlemen went out we called a meeting to take action on the Lucas resignation.

I have not talked with either Dr. Stewart or Mr. A. W. Thomas concerning the testimony that has been given in this case; just casually.

What directed my attention at that time to the fact that Dr. Stewart did not go into the hallway with his visitors, was that we were after him too hard, and Lucas was anxious to get through, and Briggs was busy and I also. I say in reply to your question that, aside from the fact that we were busy men, there was nothing to direct our attention to whether or not Dr. Stewart went with his visitors to the hallway before the meeting was begun, that Dr. Stewart did not leave the room until after the meeting.

430 You ask: "My question is whether or not that fact that you were both busy men called your attention to the fact, at this late day, that Dr. Stewart did not go into the hall?" I say in reply that the meeting was called for the express purpose of taking action on this resignation, and Dr. Stewart was in the office when we arrived there, and did not go out of the office until after the meeting.

You again say that your question still has not been answered, namely; was there anything aside from the fact that we were busy men, to bring this fact to our attention. I say that we certainly would not let him go away when we called for this meeting.

In reply to your question as to whether or not we would not even let him go into the hallway to show his visitors out, I say that I don't know whether they were visitors or not, but he did not go out.

At the first meeting of the executive committee early in June, Dr. Stewart reported to the executive committee that he could not get a lease on the Ball tract.

I can't remember whether he said that he had seen anyone. No,

I can't remember whether he said that he had seen anyone. No, sir, I can't remember.

Prior to this first meeting, we had not authorized Dr. Stewart to procure an option—this first meeting in June—to buy or get an option on it.

As to whether he reported, prior to this meeting, any dealings with Dr. Griffith, I say he reported simply that he could not lease the land; that I remember fully; that the Ball tract could not be leased.

In reply to your question as to whether he said anything, 431 prior to this meeting, to the effect that he was negotiating for its purchase or the purchase of an option, I say that I received a hurry up call to come to the Maryland Oil and Development Company's office, and when I got there found Briggs there,

and the Doctor and myself, who constituted the executive committee; and the Doctor had returned from Marlboro, or from Prince George's County, and stated that the only way he could secure that land was through the purchase of an option, the company to buy an option on it. I think he did report to us that he had already agreed with the agent or the owner to buy an option on it.

Yes sir, we canvassed the matter pretty thoroughly at that meeting; we talked about it the whole meeting; some were in favor of it and some were against it. We had reasons for the Maryland Oil and Development Co. not wanting to go on record as paying \$500 for an option on land, when we had leased land for two dollars a lease, getting sometimes as high as five hundred acres on a lease.

So far as I know, except as to this particular tract of land, all of the dealings of the Maryland Oil and Development Co. in Prince George's County were conducted in the name of the Company. There was discussed at that meeting the advisability of concealing the fact that the Maryland Oil and Development Co. was to be the real purchaser. I think there was a letter of introduction that Mr. Thomas brought down, and he was ready to go with the certified check. Mr. Thomas prepared the letter of introduction. Yes, sir, there was a typewriter in the room; Mr. Thomas had his own typewriter. The President, Dr. Stewart, signed the letter of introduction. I did not know the parties down there and I know Briggs did not know them.

I was at the meeting when it was signed. In reply to your question as to whether it was read at that meeting, I say that it was discussed, after its preparation.

I think there was a discussion of the advisability of stating in that letter of introduction that Mr. Thomas was going there as the agent of the Maryland Oil and Development Co.

I don't remember whether it was decided to be advisable not to put in that letter anything concerning the Maryland Oil and Development Co. I know the whole transaction was to conceal the identity of the Maryland Oil and Development Co.

It was not our purpose to conceal the identity of the Maryland Oil and Development Co. from the person to whom this letter of introduction was written; our whole purpose was to conceal that from the general public.

No, sir, that letter of introduction was not addressed to the general public.

In reply to your question, why, then, did we consider it advisable in a letter of introduction addressed to one person in particular not to mention the Maryland Oil and Development Co., if we did not wish to conceal from that person himself the fact that this deal was the deal of the Maryland Oil and Development Co., I say that the principal knew that it was the Maryland Oil and Development Co.

As to why he could not state, if he knew it, quite as well verbally and as to what advantage would there be in omitting from this letter and attempting to conceal any mention in the letter, of the Maryland Oil and Development Co., I say that I did not know that it was concealed. I can't remember the terms of the

letter. I said that the letter was discussed, but did not say that the advisability of not mentioning the Maryland Oil and Development Co. in that letter was discussed. I did not say in that letter, I said not mentioning the Maryland Oil and Development Co. in the matter.

Mr. MERILLAT: Before I cross examine the witness further, I would like to have read at some convenient time the witness's answer to the previous question. It being stated that the witness is about to leave town, and it being inconvenient to read the question, I waive any right on that point.

I don't think I said that it was the afternoon following this meeting, of which we have been speaking, that we again considered the matter of buying this land. I don't think I said anything like that. I have stated that there were two meetings of the executive committee, one occurring on the evening Dr. Stewart returned from Prince George's County. And I have stated that on the next afternoon, there was another meeting of the executive committee held, to devise ways and means of getting this money.

Yes sir, I am quite certain that that second meeting was in the afternoon.

In reply to your question as to whether there was any meeting on the following morning when Mr. Thomas started for Prince  
434 George's Co., I say that Dr. Stewart and I were there; I don't know whether Mr. Briggs was there or not. I had to be there to sign the check. Yes, sir, there was a meeting; a majority of the executive committee was there.

The other witnesses when they testified that there was but one meeting of the executive committee preceding Mr. Thomas' securing of the check on the morning he left for Prince George's County, might not have considered the meeting before a formal meeting; it might have been informal. But I do know that the evening before he went down there, there was a meeting of the executive committee; it has been a long time you know.

I think that the evening before there was an informal discussion by the executive committee. I distinguish between formal and informal meetings. There was not a formal meeting of the executive committee on the morning Mr. Thomas was given that check. Mr. Thomas was not present throughout that meeting or gathering on the morning he secured the check; he was out hustling for a team to go down there. Dr. Stewart procured the certification of the check. He could not do it before the bank opened—it was after banking hours. Mr. Thomas left for Marlboro shortly after ten if not ten o'clock.

Dr. Stewart, on the occasion of the first meeting of the executive committee after his return from Prince George's County, reported that the Ball tract could not be leased, and if we wanted to secure control of it, we would have to buy an option on it, and that he could get an option for five months for \$500, and the question of  
435 paying that \$500, the advisability of paying that \$500 for this option was discussed, the afternoon before the signing of the check. The afternoon of the signing of the check was

June 5. We decided that it would not be the right thing for the company to take that option in its own name, because we had leases and had a man out there leasing at that time all through Prince George's County, lands for which we were only paying \$2 a lease, and if it had gotten out among the farmers that we had paid \$500 for an option on the Ball tract, we could not have leased another piece of land in Prince George's County unless we paid the same rate, and then we authorized Dr. Stewart to take the option in his name for the Maryland Oil and Development Co., and the company put up all the money it had, \$400 and Dr. Stewart advanced the other \$100.

You say that I am straying from the question, but you asked me for a detailed statement and if you will let me alone I will furnish it to you.

If you simply wanted to know the report that he made and not the subsequent discussion of his report, you have got it, as fully as I remember.

As to whether he had agreed to take \$500 down before Monday, I know it had to be down there pretty quick. I don't remember whether he said with whom he was negotiating—Dr. Griffith or a lawyer named Robertson or Roberts.

In reply to your inquiry as to whether he said to the executive committee that any one had a power of attorney from Ball to sell the land, I say that he said Dr. Griffith had charge of Ball's affairs.

As to whether or not there was any discussion of the necessity, 436 if we were dealing with an agent, of him having a power of attorney, I say that I think a power of attorney was discussed. I don't know whether Ball signed the option or whether Griffith signed it for him.

I don't remember whether Dr. Stewart said to us that he had seen any power of attorney authorizing Dr. Griffith to deal. I had trouble enough in providing the money without going into the details.

You state that I, as a business man, knew that it was necessary, for an agent selling a piece of property to have a power of attorney, but I state that I don't remember that.

In reply to your question as to whether or not I knew as a business man that it was necessary for the agent selling land to have a power of attorney from his principal, I say that the executive committee had all the confidence in the world in Dr. Stewart, and if we had not we would never have let him take title to the land, and we did not question Dr. Stewart at all, and I know that if he had not been sure that Dr. Griffith could give title to that land, he would not have parted with that five hundred dollars; I know Dr. Stewart well enough for that.

I did not say that I was quite confident that Dr. Stewart would not have given over the five hundred dollars unless he had seen the authority of Dr. Griffith to make the sale. I said that we had confidence in Dr. Stewart; that any action he took in the matter as proper was correct. The question came up whether Briggs or I



437 should take title, and it came out that Dr. Stewart was the most responsible party of the crowd. If I had it I might not have given it up to the Maryland Oil and Development Co. if we had struck oil, and Briggs might not have given it up either. In reply to your repeated question, did I as a business man know that it was necessary for an agent selling land to have a power of attorney from his principal, I say that I have said that Dr. Stewart was taking care of that end of it, and we had all the confidence in the world in his ability to carry out our instructions in the matter to get an option on the land.

I cannot see any necessity of that question;—of you asking me about my business capacity. That has nothing to do with the deal. If I had the land in my name I might have knocked some one down and kept the land. That has nothing to do with the matter.

Question repeated.

Argument by counsel.

If you were selling me a piece of land I would want title all right. I tell you right now.

I am a salesman at the present time. I have been in the oil business. I have had dealings in real estate; hundreds of them. You ask me whether I know that if an agent exceeds his power of attorney, that he has committed an act that is beyond his authority and it is not valid and binding on the principal. I say that when I had legal business I gave it to a lawyer and when I buy property I have the title guaranteed, and I never troubled my head about whether he was able to give title or not. I hold my attorney

438 responsible for the transaction.

Objected to.

Your question is:—“And you were confident that Dr. Stewart as an attorney, would not give up the \$500 unless he knew of the authority of the man with whom he was dealing to make the deal?” I say in reply thereto that I don't think Dr. Stewart would have bought that option from Griffith or Roberts or Ball, or whoever he bought it from, without being sure that the option was good.

Yes, sir, I came on here from New Jersey for the purpose of this case; I was advised by a letter that they wanted me to give testimony.

On rebuttal in behalf of complainant Richard A. Rawlings testified that after James Ball's death witness was a tenant on the farm James Ball had owned in Prince George's County. Over objection witness testified that he paid the rent to Alfred Ball in 1903 paying him \$50 a years rent in two payments of \$25 each in September and October.

Over defendant's objection who moved to suppress his deposition witness testified that Alfred Ball had told him he had sold his farm. Alfred didn't give him any of the particulars.

C. W. MARK, a Methodist minister, located in Prince George's County testified that he was acquainted with George R. Leapley, Elisha Ferguson and George K. Flynn.

Q. Do you know others in the community who are acquainted with them? A. I do.

439 Q. Have you heard the reputation of any of them—do you know what is the reputation of any of them and, if so, of which in that community for truth, veracity and honesty?

Mr. THOMAS: One moment. We object to that statement on the ground that the witness has not been qualified and on the ground that the form of the question is improper.

Q. I will ask you then whether or not you have heard the reputation of George R. Leapley in that community for truth and veracity discussed by those who know him?

Mr. THOMAS: We object on the ground that the question is improper.

A. I have.

Q. Please state what is the reputation of Mr. Leapley for truth and veracity in that community?

Mr. THOMAS: We object to that as being inadmissible and not evidence of any kind.

A. Well, in my acquaintance with the people of that community and association with them I have heard his name mentioned by quite a number of persons as being not reliable.

Q. What can you say as to his reputation for truth and veracity? I don't know whether I understand your meaning and use of the word reliable. A. Well, the reputation—I scarcely know a better word to use, but the reputation is not good.

Q. Now, I will ask you whether or not you have heard the reputation, and I would like you to state, if you will please, some of the persons whom you have heard discuss the reputation of Mr. Leapley for truth and veracity in that community?

Mr. THOMAS: Objected to as inadmissible.

440 A. I have heard Mr. George Branson and Mr. Enos Pumphrey and if it is necessary I can mention others.

Mr. THOMAS: If the witness attempts to answer the question we desire him to answer it fully.

Q. Please state whether or not there are others in that community whom you have heard discuss it—talk about the reputation for truth and veracity of Mr. Leapley?

Mr. THOMAS: I submit, Mr. Merillat, you ought not to have interrupted the witness with another question. You ought to permit him to answer the question you have already asked him.

A. I have heard Mr. Frederick Binger and Mr. C. W. Randall.

Q. Please state whether or not you are acquainted with or heard the reputation of Elisha Ferguson in that community for truth and veracity discussed? A. I have heard his character discussed.

Mr. THOMAS: We object to the character and object to the question because it is not in proper form. The question is not what the character of the witness, but the question is what is his reputation for truth and veracity.

WITNESS: His reputation for truth and veracity, so far as I have heard it discussed, is not good.

Q. Has that reputation for truth and veracity been the subject of discussion in that community among people living in that community and residing thereabouts? A. A gentleman came into my house a few days ago and in conversation with me spoke of him in this way: that he would not under any condition attach any importance to his statement.

Q. Now, please state whether or not you are acquainted with the reputation for truth and veracity of George K. Flynn in that community? A. I haven't heard his reputation discussed.

Over objection as not being rebuttal witness said he was acquainted with Alfred and James Ball in their lifetime, that they were rather secluded in their manners and habits and so far as he was able to learn did not associate with people in the community. His attention being called to testimony that Alfred Ball would talk very freely to any one he met about his affairs and the sale of his property witness said, over the same objection, that this was not in keeping with the man's manner. Alfred was not inclined to talk much. He had had exceedingly limited educational advantages. Witness' attention was called to Branson's testimony that Alfred Ball had told him that \$500 would be forfeited and the contract would be "void," unless the balance were paid within a specified time. Witness was asked if Ball would know the meaning of the word "void." Witness said he could not positively answer as to that. Ball may have known the meaning of the word and may not. Witness was able to say that Ball's vocabulary was exceedingly limited. He had talked with Ball a number of times at Ball's request. Very shortly after the sale was made, over objection as not being rebuttal witness said, Ball had told him the farm had been sold to Dr. Stewart, naming a price and the terms, that is, that \$500 had been paid and that the land was to be surveyed to ascertain the quantity and that the balance of  $\frac{1}{2}$  of the purchase money was to be paid on the 7th of November.

Witness was asked regarding testimony that Alfred Ball had said he had sold an option on his farm and, over objection as not being rebuttal, witness replied that Alfred said nothing of the kind to him.

On cross-examination witness said he came here at the request of Dr. Griffith who asked him last Tuesday. He had not seen Dr. Griffith before for about six or eight weeks. He has not been summoned. Witness testified he had four churches in the county and that one of them was a beneficiary under the will of Alfred Ball to the extent of \$2,000. Asked if he understood that if Dr. Griffith failed in his suit the church would not get that legacy witness said he did not so understand but understood they would get the legacy whether the suit was won or not because there was other property which had been sold and which brought \$2,275. Asked if Mr. Leap

ley was a contributor to his church witness said if so he was not aware of it.

Asked when George Branson had questioned Leapley's veracity witness said he could not give the date but it was on the pike between Centerville and Marlboro at Branson's blacksmith shop. At one time there were others present but on the other occasion there was no one there except Branson and witness or probably one of Branson's boys. One of the conversations was in the fall of last year. The case was then pending. Branson had said to witness of Leapley that he would not say of him that he lied but that he handled the

truth very carelessly. Witness said he could not go into  
443 details of the conversation as Branson had not attached importance to any evidence Leapley would give, and he had not taxed his mind with it. Branson was shoeing witness' horse at the time. Witness could not give he said all of the testimony of a merely incidental conversation in words but could give the impression made on his mind. He remembered Branson using the word "unreliable" as applied to Leapley.

His conversation with Enos Pumphrey occurred yesterday. Pumphrey had told him when witness gave him a letter to deliver that he did not care to be mixed up in the case, that his trouble with Leapley had been settled and he had to live by him as a neighbor. Pumphrey had stated that Leapley had testified under oath he had never been behind his, Pumphrey's counter and that in the suit he, Pumphrey, showed magistrate the books with Leapley's own handwriting where he had gone behind the counter and made entry for articles purchased. Witness admitted he had taken a letter to Enos Pumphrey for Dr. Griffith at the latter's request, asking Pumphrey to testify as to Leapley's reputation. He had made no suggestions to Pumphrey. During Christmas week of the past year Mr. Binger had spoken to him regarding Leapley but he could not recall the details. At Randall's mills just before Christmas, 1904, Mr. Randall had said that in business transactions Leapley was not considered a man of his word. He said Leapley's reputation was bad. Witness said he had heard James Fowler, Ferguson's brother-in-law, speak of Ferguson's reputation. Fowler had said ironically that on

444 the evidence of Ferguson surely the other side ought to win and Ferguson's evidence on any point would have no weight with him. They were discussing the case and he had discussed it with all whom he has named & it was a matter of general talk in that community.

SCOTT ARMSTRONG testified that he was an undertaker living near Forestville and that in the autumn of 1903 he had a conversation with Dr. Stewart, the defendant, concerning the ownership of the Alfred Ball tract in controversy. Witness, over objection as not being rebuttal, said he wanted to get a lot for a school house and went to Dr. Stewart and asked him if he had bought the place individually or for the company, saying he would like to have a lot off the corner for a school house. Stewart told him that he had bought it individually and that the company had nothing to do with

it. Witness was one of the school trustees. Witness said he lived very near to Ball and knew him; over the same objection he said Ball was a man of no education and was in witness' opinion a man who did not talk freely about his affairs. He had never gone into details concerning the matter of the sale with witness, and thereupon defendant's counsel moved to strike out the deposition as not rebuttal.

GEORGE B. MERRICK, aged 29, lawyer, of Upper Marlboro, testified he lived in Prince George's County all his life. He was acquainted with Elisha Ferguson and with others in the community who knew Ferguson. Asked Ferguson's reputation in the community for truthfulness and veracity witness replied it is not of the best. It is not good. I have heard a great many people say they would not  
445 put any confidence in what he said and have heard some say they would not believe him on oath.

Asked as to the reputation of Leapley for truthfulness and veracity witness said "From what I have heard it is not good at all." I think a good many people say they would not believe him on oath.

Witness said he did not know what the reputation of Flynn was for truthfulness and veracity.

CHARLES A. DUVALL, 38 years old, a farmer who had lived in Prince George's County all his life, testified that he knew Leapley's reputation in the community for truthfulness and veracity. Asked what it was he said: "He is a big liar and a big rascal too and I have known him all my life. That is his name all through the county."

Asked Ferguson's reputation as to truthfulness and veracity witness said it was bad and that people said he was a big rascal and a big liar.

Asked if acquainted with Flynn witness said he just knew him to see him and had not heard much about him. He knew he was a big drunkard and that was about all he knew about him.

Mr. Thomas moved to strike the last out.

On cross-examination witness said he lived about five miles from Leapley by the road. He had never had any business transactions himself with Leapley. He did not know his father had a flock of Leapley's sheep on his farm but he thought his brother had some on the adjoining farm to his father's. Over complainant's objection witness said that he never heard any dissatisfaction regarding this deal and he never heard any dissatisfaction in the world.

446 Asked who had told him Leapley was a big liar witness said he did not know exactly, that he had heard people all over the county talk about it. He could not say how long ago it was he last heard it but it was a long time. He could not say likewise who he had heard different people say Leapley was a rascal, and it was the general talk; he could not give the name of one person. It had been perhaps four or five years ago that he had heard this said. It was general neighborhood talk. He could not remember any of the name of one person who he had heard say it; he could not recollect. It was about four or five years ago. He said he had been asked

to come here by Dr. Griffith. He had been paid nothing and nothing was promised him for coming. He had paid his own expenses.

Asked whom he had heard say Elisha Ferguson was a big liar or a big rascal he said he had heard Mr. Judson Richardson and also Mr. George Richardson say so. It might have been a year or more ago and the two he said had said it at different times: he did not know the time or place or occasion.

Asked what they were talking about at the time witness said he knew Ferguson wanted him two or three times to buy his vote and witness would not trust him.

Asked if he had paid Ferguson for his vote Witness said no because he would not trust him about it. He could not say what he was talking with Judson Richardson about when Richardson spoke of Ferguson. Witness said he could not remember the names of any other persons who had spoke regarding Ferguson. He had heard a heap of people say but he could not give the names.

447 On re-direct examination witness testified that he was first asked to testify in the case about one-half hour ago. He hadn't come to Washington on any business connected with this case and did not know anything about it.

B. F. DUVALL testified that he had lived in Prince George's County all his life except four years and was a farmer. He had heard Leapley's reputation for truth and veracity discussed once. Over objection witness testified that it was at the time Mr. Leapley and Mr. Edlavitch and a man named Bennett had a law suit. It was some time ago, more than two years ago, about 1858 he thought—it was way back; that he had not since heard it discussed.

Over objection and motion to exclude his deposition he was asked Leapley's reputation for truth and veracity in the community. He replied: "I am very sorry to say it is not very good. I will state that Mr. Leapley has always been a good friend of mine. He has always treated me right so far as I know. All I say is what I hear."

Q. What have you heard people in that community, neighbors and others, say of him as to truthfulness and veracity?

Over objection witness said "They say he is pretty hard to bargain with—he doesn't stand by his word, or something like that in making bargains." Witness knew Elisha Ferguson and others who knew him Ferguson and had heard his reputation for truth and veracity discussed. Asked what it was he replied: "It is not very good. I

448 have heard Mr. Richardson say he would not believe him. I have heard his sister-in-law, Mrs. Tucker, say she would not believe him. That is about all I know." Witness said he had known Alfred and James Ball a long time; he used to see them; used to meet them on the road. He thought they never said anything to anybody, they were a quiet sort of people, never told their business to anybody and he thought never went anywhere else. From what he knew of them they were not people who would be likely to talk of their business affairs with anybody they met, in reply to a question as to whether they would or not. On cross-examina-



tion witness said he had been elected county commissioner a long time ago. He could not recollect how long. He had been tobacco inspector under Governor Lowndes. He and Lowndes had some difficulty because witness would not appoint people in the office and he and the Governor could not agree and the governor removed him. Asked if he was not removed because he was carrying a man on the rolls who was dead and if a charge hadn't been made against him witness said "no, sir, they wanted a man appointed to the commission of janitor and I had already appointed a man and I refused to appoint a man from the Eastern shore. We could not agree about the appointments and he appointed another man to do as he wanted me to do. I paid up everything I owed, my report will show. I don't owe the State of Maryland a cent. I put more money into it than any other man who was an inspector of tobacco." Charles Duval witness said was his son. He did not know exactly what his son's age was, he supposed his son was 24 or 25 years old, he may be thirty.

He was one of the youngest children and witness had several  
449 sons older than Charles, and could not tell his age to save his soul.

Witness testified that Elisha Ferguson's wife and Judson Richardson and Mrs. Tucker were brothers and sisters. Witness did not know what their relations were, whether on good or bad terms, he could not tell the time he heard Judson Richardson talk about Ferguson; two or 3 or 4 years ago maybe; he could not tell what he said. That Mrs. Tucker said Ferguson had a fine horse; her father died & he got the money and bought it; he heard no more.

Dr. L. A. GRIFFITH was recalled and asked concerning the statement by Ferguson and Flynn that Ball had informed them that he Ball had had trouble with witness and had gotten at various times \$5 and \$10 after the agreement with Stewart and prior to Alfred Ball's death. He was asked if that statement was correct and replied "it is positively not correct." Over objection as not proper rebuttal he said: "I only gave Mr. Ball, with the exception of the transaction of the sale of that land and the passing over of some money that came from James Ball, I never gave him money but once. I never had any to give him but once and that was on the 23rd of July when I gave him \$25.00. He had plenty of money all the time."

Alfred Ball himself had collected the rent for the James Ball farm of which Rawlings was tenant. Alfred reported it to witness and witness charged Alfred with it and credited James Ball's estate with it. Over objection that a memorandum from the bank is the best evidence witness testified that Alfred Ball had deposited to his credit in the Laurel Bank all this time \$300. That James and  
450 Alfred Ball together gave him \$400 to be deposited in the Marlboro Bank. James Ball said it was his and Alfred Ball's money, but that it came from Allie Ball's farm but James Ball did the work. Just prior to James' death Alfred had asked witness to draw it all out and give it to him and witness drew it out and gave it to him, the whole amount. Jim Ball told witness to deposit the

money for him and Allie Ball, and when James Ball died he asked witness to make an account of what was necessary to close the whole estate and pay all of his debts, and he gave me back the \$300. The Balls were economical livers and he gave witness back \$300 and told witness to pay off James Ball's debts and the other \$100 he kept to do as he chose with it. Witness knew Alfred Ball in the summer and autumn of 1903 had ready money at home, because he saw him with it. Alfred Ball never made any demand upon him for money as testified to by Ferguson and Flynn.

Witness denied he had ever had any conversation with Dr. Stewart as the letter testified at which he had suggested that the company should sell more stock and pay witness for the land. Stewart never had said anything about stock to him and he never had any such conversation.

Dr. Stewart's testimony that witness had tried to conceal from Stewart the fact of Ball's death when witness was in Washington the first time after Ball's death was perfectly absurd. He had not concealed it. Over objection that it was argument witness said the funeral had been a public funeral and a notice of the death had been given in the papers and everybody knew it and witness had  
451 no motive in concealing it at all. Witness said he brought no deed with him when he came to Washington on this occasion. Dr. Stewart had asked him if he had a deed and witness had told him no. Over objection as not rebuttal or evidence at all witness testified that at the time of the agreement with Stewart he, witness, was president of a corporation and had a good deal of business with other corporations and knew perfectly well that it was necessary for a corporation officer to have authority in order to bind a corporation. At the time of his agreement neither Mr. Thomas nor Dr. Stewart had produced any authority to act for any oil company, witness said, over the same objection.

Asked as to A. W. Thomas' testimony with reference to the power of attorney to the effect that witness had told Thomas in the conversation which resulted in the draft of the agreement, the notary had the power of attorney witness replied that he positively had no such conversation. He never had had any business with the notary but with a justice of the peace. Ridgely never had had the power of attorney in his, Ridgely's possession. Asked what was done with the power of attorney as soon as Ridgely took the acknowledgment witness said the power of attorney in which witness' commission was set forth was sealed up and put in witness' safe, and which seal was not broken until the death of Alfred Ball and he had to file it in the Orphans' Court. Asked regarding A. W. Thomas' testimony that Mr. Roberts showed him the power of attorney in Washington after June 5, the day the agreement was made and signed in Marlboro,  
452 witness testified that Mr. Roberts did not have that power of attorney to bring up here with him. As he had before stated the power of attorney was never out of his possession. Mr. Roberts never had seen it after he drew it up. It was in his safe at home and Mr. Roberts never saw it after he drew it up.

Witness testified that he signed the typewritten agreement at

Upper Marlboro. The typewritten power of attorney annexed to the agreement that was recorded at Upper Marlboro witness had not seen until it was brought into this case, he had never seen it until then. Witness had nothing to do with the recording of this paper and did not know it was on record until after it had been taken away.

Asked if A. W. Thomas had told him to try to make people believe if any questions were asked that witness had made a lease of the Ball farm witness said no such conversation took place. He had never been introduced to Mr. Thomas as Secretary of the Maryland Oil & Development Company. He had never met Mr. Thomas but once and then did not know who he was.

Dr. L. A. GRIFFITH, the complainant, was recalled for further examination in rebuttal, and testified as follows:

By Mr. MERILLAT:

Q. Doctor, please state whether or not the paper I now hand you, marked "Exhibit A. W. T. No. 4," being the recorded agreement between yourself and Dr. Stewart, is the one handed you at the last session and with respect to which your testimony applied?  
453 (Counsel hands witness said exhibit.)

A. Yes, sir, this is the same paper, the paper I signed, sir,

Q. Doctor, please state whether or not the handwriting on the back of said paper, beginning with "L. A. Griffith, Agent," and ending with "July 2nd, 1903" is in your handwriting or whose? A. In my handwriting?

Q. Yes, sir. A. No, sir, no part of it.

Q. Do you know whose handwriting that is? (Indicating.) A. Yes, sir, I recognize the top of that and down as far as those heavy lines there are concerned. I know all that top writing. I think that is the same. I identify that paper as the writing of the chief clerk of the clerk's office.

Mr. THOMAS: What writing does he mean?

Mr. MERILLAT: I mean from "L. A. Griffith, agent."

A. It is the writing of the chief clerk. It is the writing of J. N. Wilson.

Mr. THOMAS: Down to what?

Q. Please read the part you mean, the words which you say are in Wilson's handwriting? A. I say that the words there in the lower part of that, the last four lines of that I do not recognize as Wilson's. I don't know. But I say the upper part of that, from "L. A. Griffith, agent," to "W. W. Stewart" is in J. N. Wilson's handwriting. He was chief clerk in James Belt's office.

Q. Mr. Leapley has testified, Doctor, that when he first saw you he told you that he, Leapley, was acting for the Maryland Oil and Development Company and would bring its president, Dr. Stewart, down to see you. Is that correct?

454 Mr. THOMAS: I object because in the examination in chief in this case Dr. Griffith put his case on the proposition, as far as the Maryland Oil and Development Company was concerned,

that he never heard of the Maryland Oil and Development Company in connection with this contract and Leapley was called to contradict Dr. Griffith, and it is not proper to reiterate the case in chief by now calling Dr. Griffith.

Mr. MERILLAT: Can I have a stipulation with counsel that so far as concerns any statements by A. W. Thomas, Dr. Stewart or Mr. Leapley to the effect that Dr. Griffith was apprised prior or at the time of the signing of this agreement that it was the Maryland Oil and Development Company—can I have a stipulation that there is a square conflict and denial between the respective parties upon that score. My purpose in this is solely to save the record; otherwise I want to call the Doctor Griffith's attention to each specific statement to that effect wherever made in the record and ask him if such a statement was made.

Mr. THOMAS: I don't care to enter into any stipulation about it, but I will simply do this, if Mr. Merillat will consent without making any more objections whatever, if he will allow me to just reserve one general objection to the evidence and to call the attention of the Court at the argument to what I regard as not rebuttal, having the benefit of it as if having been objected to at the time, I will not say another word.

Mr. MERILLAT: I agree to that.

455 Q. Mr. Leapley testifies that he told you that he, Leapley, was acting for the Maryland Oil and Development Company and would bring its president, Dr. Stewart, down to see you. Was there such a conversation as that? A. No, sir, never told me so.

Q. He says that he introduced Stewart to you as the president of the Maryland Oil and Development Company and representing it. Is that so? A. It is not so. He did not so introduce me.

Q. Mr. A. W. Thomas testifies that he was introduced to you as the secretary of the Maryland Oil and Development Company and that he told you he was there representing the Maryland Oil and Development Company. Is that correct? A. No, sir.

Q. Dr. Stewart testifies that he told you he was there representing the Maryland Oil and Development Company and was making this deal as the president of the company. Is that correct? A. No, sir, never had any such conversation with reference to it.

Q. Dr. Stewart testifies that he told you that five hundred dollars was more than the company had authorized him to pay and that he would have to see his board of directors about that. Is that correct? A. No, sir, that is not correct. He told me the matter was closed. I could consider the matter closed in his language.

Mr. THOMAS: I object to the language of the witness. I  
456 ask you to confine him to answering your question.

Mr. MERILLAT: I would request you to do that, Doctor. I don't object to that. We don't care to string out the rebuttal.

A. Very good, sir.

Q. Doctor, what, if any, knowledge had you at the time of the agreement that the statement made in the letter of introduction

that Mr. Thomas appeared there as the attorney for Dr. Stewart did not represent the real fact and truth of the matter as to whom you were dealing with? A. Had no knowledge whatever, sir.

Q. Mr. Leapley says that the reason for the survey was because you did not know where the corner stones were and Dr. Stewart insisted on the lines being run. A. That I did not know where the corner stones were?

Q. Yes, sir. Is that correct? Was that the reason for the running of the survey? A. No, sir.

Q. What was the reason? A. The reason for running the survey was to know the quantity of land that we were selling. I did not know. Mr. Ball always contended that he had not less than 275 acres and Dr. Stewart said the record did not show but 240.

Q. Mr. Thomas says that he told you that he, Thomas, would pass on the sufficiency of the title? A. He did not, sir.

Q. Please state whether or not it was agreed that Mr. Thomas should be the one to determine whether or not a good title  
457 could be given? A. No, sir, it was not. I did not know Mr. Thomas was a lawyer at that time. He signed himself agent and that is all I knew, except his writing that contract.

Q. When Mr. Roberts came up to Washington after the signing of the agreement in Marlboro, did he have any authority from you to accept any other person or corporation than Dr. Stewart as principal on the contract? A. He had not, sir. He never acted as my agent.

Q. In that matter? A. In that matter, sir.

Q. Mr. Thomas says that in Marlboro he asked you not to let any person know that the oil company was dealing in the matter and further that he asked you, if any inquiries were made of you, to make people believe that it was a lease. Did he make any such request of you? A. He did not tell me anything about the oil company.

Q. Did he ask you to delude people into the belief that this was a lease?

Mr. THOMAS: Mr. Merillat, do you claim that there is any such testimony in the case?

Mr. MERILLAT: Yes, sir, Mr. A. W. Thomas has testified?

Mr. THOMAS: Did he use the word delude at all?

Mr. MERILLAT: No, sir, he did not use the word delude.

Mr. THOMAS: I submit it is not proper.

Mr. MERILLAT: I will endeavor to adopt his word then.

Q. Did he ask you to make people believe that this was a lease?

A. For the oil company?

458 Q. Did he ask you to make anybody believe that this was a lease and not a sale?

Mr. THOMAS: That was not the testimony. Also in a previous question Mr. Merillat asserted that Mr. Thomas testified that he informed Dr. Griffith that he represented the Maryland Oil and Development Company. Mr. Thomas did not give any such testimony.

Mr. MERILLAT: I think your objection is right. The last part of

it is correct. I assumed that Mr. Thomas had testified with reference to the oil company. I should not have bunched the two matters.

Q. At one place in the testimony of Mr. A. W. Thomas he testified that he requested you of there were any inquiries of you to make people believe that this agreement that you had effected was a lease. Did he make any such request of you? A. I have no recollection of such a request, sir.

Mr. THOMAS: I don't think that that was the testimony.

Q. Mr. A. W. Thomas testified at another place that he told you that he, Thomas, would pass on the sufficiency of the title as secretary and attorney for the oil company. Is that correct? A. No, sir.

Q. Dr. Stewart testifies that he asked you to get them as long an option as it was possible, or as you could get. Is that correct? A. No indeed, sir.

459 Q. Did you ever have any authority of any sort to give an option on this property? A. Absolutely none. I was told not under any circumstances to give it.

Mr. THOMAS: That was distinctly testified to more than once by this witness on his direct examination. I respectfully call the attention of the Court to this reiteration of his testimony.

Q. Dr. Stewart testifies that at one of these "pop" calls you asked him, Stewart, what the company would do at the expiration of the option and that he replied that it depended entirely on the oil company's prospects. Is that correct? A. That is not correct, sir.

Q. Doctor, there has been a letter introduced here in which you say, "please consider the matter ended." At the time of the writing of that letter had you qualified as executor? A. No, sir.

Q. Please state the circumstances under which that letter was written and make such statement as you desire concerning it?

Mr. THOMAS: I object to any attempt to alter or vary the written contents of this paper or change the legal effect of it by anything uncommunicated by this witness at the time that the letter was received by Dr. Stewart?

Mr. MERILLAT: The contract at that time was in the hands of the court, which alone could act.

(Hereupon the question was read.)

460 Mr. THOMAS: I also call attention to the fact before this question is re-read that this witness testified on his direct examination in contradiction of the allegation of the answer of the defendant to the effect that the complainant had abandoned his cause of action and had consented to the abrogation of the contract and that he had not done so in any manner. I do not recall the exact language, but he went over it to the effect that he never communicated such a fact to Dr. Stewart.

Mr. MERILLAT: We refer to the record.

(Hereupon the question was re-read.)

A. That letter was written for several reasons. The first was that



while I had no authority at the time to act I wanted something definite to bring before the Orphans' Court when the will would be admitted to probate and when I would qualify as executor. I did not know that Dr. Stewart was worth any property on which I could recover the price of the land. I had another offer for the property at that time and the very day I wrote to Dr. Stewart. When this matter was mentioned to the lawyer and before the Court assembled he said that nobody had any right to violate that contract.

Mr. THOMAS: I move to strike out the conversation between the lawyer and himself as hearsay.

Q. Please state whether or not you consulted a lawyer for advice concerning your rights in the matter and what advice you got? A.

461 I did consult a lawyer and I got the advice that I could not alter that contract at all. I had no authority to do it and the matter was in the hands of the court and the matter was then dropped.

Q. Please state whether or not you received advice that if you did undertake any other disposition of that property you could be sued by Dr. Stewart with respect to it and be compelled to——

Mr. THOMAS: Don't you think that is a little leading.

Mr. MERRILLAT: I don't know of any other way, Mr. Thomas, to phrase that question.

Q. Go ahead, Doctor? A. I was informed that I would only bring on a law suit to dispose of it—to dispose of the property except to Dr. Stewart under that contract. The matter was then put into the hands of the Orphans' Court and proceedings such as have been recorded here were taken.

Q. Please state who that lawyer was? A. Mr. Joseph K. Roberts.

Q. Dr. Stewart has testified that he thereafter considered the matter closed. Did you have subsequent dealings with Dr. Stewart in relation to it after the writing of this letter?

Mr. THOMAS: All that is objected to. He went on the stand and testified to the times when he had dealings and what his dealings were in the testimony in chief.

Mr. MERRILLAT: In the light of that I shall not pursue it further than to get the fact that they had subsequent dealings and will refer to the previous record.

462 Mr. THOMAS: He did testify to it. Of course, I don't concede that he did have. I concede the fact that he testified to it.

Mr. MERRILLAT: I don't want to reiterate testimony in chief.

Q. Dr. Stewart testifies that just as soon as you and Ambrose came over and handed him a paper that he turned it over to Mr. Thomas for the Maryland Oil and Development Company and told you that he hadn't anything to do with it. Was there any such conversation as that? A. There was not, sir.

Q. Dr. Stewart has testified that he knew nothing then or had any agreement then with respect to the taxes until he got a letter or postal card from you and as it was a small matter the Board decide-

or the executive committee, decided to pay them. Is that correct? A. That is not correct. We agreed about the taxes and the power of attorney was signed at the request of Mr. Ball.

Mr. MERILLAT: At this point I desire to call the Court's attention to the statement in the agreement marked "A. W. T. No. 4" that the taxes were to be paid, one-half by Ball and one-half by Stewart.

Q. It has been testified here that at your house ten thousand dollars was agreed on as the price to be paid and it was later changed to forty dollars an acre. What have you to say as to whether or not that is correct. A. That is not correct. We agreed upon the forty dollars an acre and Dr. Stewart may have remarked that that  
463 being 240 acres it would be somewhere near ten thousand dollars, but we agreed upon no such agreement because it was agreed that forty dollars would be the price by the survey.

Q. And Dr. Stewart has testified that 240 acres was definitely fixed as the limit of acreage for which payment would be made, is that correct? A. No, sir.

Q. Dr. Stewart has testified that the mysteries of this recorded paper and power of attorney can be better cleared up by complainant than by himself. Have you any means of clearing up what he calls mystery or how that paper came to be recorded?

Mr. THOMAS: I object to that statement as not being the testimony in the case. Dr. Stewart was not speaking of the recording of the paper, but was speaking of the agreement itself.

A. No, sir.

Mr. MERILLAT: I simply refer to the testimony at page 93.

Mr. THOMAS: That is all right. It is perfectly clear from the testimony what he meant.

Q. Mr. A. W. Thomas testifies at one time that he told you at Marlboro when the agreement was signed that the whole matter was a gamble and that the five hundred dollars could be forfeited if the bargain was not kept. Did you have any such conversation as that? A. No, sir.

464 Cross-examination.

By Mr. THOMAS:

Q. Did you have any correspondence with Mr. A. W. Thomas prior to the transaction regarding the Ball tract of land? A. I do not recall any, sir.

Q. Do you recall writing him any letters? A. I do not recall any. I may have, since you remind me of that, received a letter from him. I received several letters from several parties concerning a piece of land I sold Mr. Briggs, but I paid very little attention to it. If Mr. Thomas wrote me I did not identify it as the same Mr. Thomas and I did not know. I did not know who it was. I did not see Mr. Thomas to know him in the matter.

Q. Didn't you address Mr. Thomas in those letters as attorney at law? A. I do not know that. I may have done so, but I do not

recall that it was the same Mr. Thomas as in this case. I did not know that it was the same person. I do not recall any such letters I wrote to Mr. Thomas in that respect. I do not say that I did not write to him, however.

Q. When did Mr. James T. Ball die? A. James T. Ball died on about the 22nd or 3rd I think of June, sir.

Q. 1903? A. 1903, yes, sir.

By Mr. MERILLAT:

Q. Dr. Griffith, I find that Mr. A. W. Thomas testifies that you went out and brought Mr. Latimer and Mr. Roberts in while  
465 he was drawing the contract. I will ask you whether or not you brought Mr. Latimer in?

Mr. THOMAS: I don't think that this was in the testimony.

A. I went out and brought Mr. Roberts in.

Mr. MERILLAT: That is all.

By Mr. THOMAS:

Q. Was Dr. Stewart there when Mr. Latimer came in? A. When Latimer came in when, sir?

Mr. THOMAS: I ask the Examiner to read the witness the last question of Mr. Merillat.

(Hereupon the question as requested was read to the witness.)

Q. Was Latimer there? A. I did not see him.

Q. At any time? A. With Mr. Roberts then?

Q. That day at your office? A. I did not see him there that day  
at all.

Q. He was not there at all that day? A. I don't remember seeing him.

Q. When was Latimer at your office? A. Mr. Latimer has been at my office dozens of times during the summer, but not if you mean with anybody else.

Q. Was Latimer ever at your office with Dr. Stewart? A. If he was there at the office with Dr. Stewart I did not see them together.

Q. Haven't you testified that Latimer came to your office  
466 to see you about the survey? A. He came there a number of times, but I did not see him with Dr. Stewart.

Q. At any times? A. No, sir.

Q. How old was Mr. Latimer? A. I do not really know his age, Mr. Thomas. I suppose he is about sixty-eight years of age, I reckon, sir.

By Mr. MERILLAT:

Q. Is Mr. Latimer still living? A. Mr. Latimer is still living and he is at his home in Prince George's County.

JOSEPH K. ROBERTS, a witness heretofore produced for and on behalf of the complainant, and being recalled in rebuttal, testified as follows:

By Mr. MERILLAT:

Q. Mr. Roberts, Mr. Thomas has testified that when you came up here with the typewritten agreement you showed him the power of attorney with Dr. Griffith's commission in it.

467 Mr. THOMAS: I would like counsel to fix the date and also the paper. The same trouble is now about to be enacted again.

Q. (continued). The paper being the agreement marked "A. W. T. No. 4," and the date being, according to my recollection of the testimony, June 6th, and he testifies that he said to you he understood now the reason why Griffith had not shown the power of attorney because he, Griffith, was to get five dollars an acre commission and that you laughed and said business is business, etc. Did any such conversation occur between you and Mr. Thomas? A. It was not on the 6th of June. I think that was after I came up with the order of the court. I think I brought the power of attorney then in November. That was the time the conversation took place. I think such conversation did take place, but I think Mr. Thomas is mistaken as to the date. It was after the court has passed the order and after the death of Mr. Ball.

Q. When you came up in June did you bring up any power of attorney with Dr. Griffith's commission included in it? A. No, sir.

Q. Had you that power of attorney? A. Dr. Griffith would not give it to me.

Q. Prior to the death of Ball? A. No, sir, he would not give it to me. He seemed to want to hang on to it himself.

Q. Mr. Thomas has testified that at this time he said to you that "you understand that the oil company is the real purchaser?"

468 Mr. THOMAS: At what time?

Q. This date being June 6th, and you replied; "Yes, sir, that you knew it was the oil company." Is that correct? A. I haven't any recollection of Mr. Thomas saying anything like that to me. He may have said it. I don't know. I don't remember it at all. He may have said that. I don't recollect it. I have no recollection of it whatever, of his having said that and that is the reason I testified in my direct examination that I never heard of the oil company. I don't have any recollection of any such conversation at that time.

Q. Mr. Roberts, prior to your coming to Washington on June 6th with the typewritten agreement had you any knowledge that this was the oil company's deal? A. No, sir, I had not.

Q. Mr. Roberts, please state whether or not you keep books of account regularly? A. Yes, sir.

Q. Have you your book of account? A. Yes, sir.

Mr. MERILLAT: Please produce the same, and I desire to offer the book of Mr. Roberts in evidence.

Q. Mr. Roberts, how did you charge up your bill? When did you charge it up.

Mr. THOMAS: Are you looking at the book now, Mr. Roberts?

A. Yes, sir.

469 Mr. THOMAS: I object to any evidence being offered based on the contents of this book. I also object to the witness orally testifying how he made a charge as not being rebuttal testimony, he having already previously contradicted himself by his own letter filed in this case.

Mr. MERILLAT: I submit that this is unauthorized because it appears that his own letter was written sometime subsequently and when he may have had reason, or some intimation of an oil company's connection therewith, and I desire at this point to offer in evidence the entries made contemporaneous with the transaction itself. I herewith offer in evidence the book of account of Mr. Joseph K. Roberts and ask the Examiner to copy it in the record.

Mr. THOMAS: I object to this evidence both as primary and secondary.

At the request of Mr. Thomas, counsel for defendant, the two pages of the book offered in evidence were marked for identification by the Examiner as "Roberts Rebuttal 1, E. L. W., Examiner," and "Roberts Rebuttal 2, E. L. W., Examiner." Said pages are in words and figures following, to wit:

Page 222.

Dr. L. A. Griffith & Alfred W. Ball, Meadows, Pr. Geo. Co., Md.

To 1/2 attorney's fees of \$50.00 in sale to Dr. W. W. Stewart, Washington, D. C., of Ball's farm at Meadows .....	\$25.00	
470 Drawing power of attorney from A. W. Ball to Dr. Griffith in reference to real estate of James T. Ball....	\$5.00	Paid cash..... \$5.00
July 3. Drawing Will of Alfred W. Ball.....	\$15.00	
July 4. Extra charge.....	\$5.00	July 14, By cash..... \$20.00

Page 223.

Dr. W. W. Stewart, Washington.

June. 1/2 of \$50.00 attorney fee in sale by Alfred W. Ball of his farm to you.....	\$25.00
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Q. Mr. Roberts, please state whether or not that book was kept in the regular course of your business and the entries made at the time of the transactoin? A. Yes, sir, it was. I charged Dr. Griffith on one side—on one side of the book and Dr. Stewart on the other side of the book the fifty dollars mentioned in that agreement.

Mr. MERILLAT: I desire to give notice that at the hearing of this cause I will produce the book for the inspection by the Justice hearing said cause.

Mr. THOMAS: I give notice now that I will object to the reading of this book as evidence and I notice that this entry at page 222 of the book refers to but one power of attorney; that the earliest  
471 date in it, in the entry, is July 3rd; that no year is mentioned on any of the entries. I would like to have the Examiner mark that page, putting his signature on it for identification.

(Said pages were accordingly marked by the examiner as heretofore stated.)

Mr. MERILLAT: I think counsel will concede that it go of record that the entry of July 3rd is a totally different matter, and that 1903 further more as a date appears upon that same page in connection with another matter.

Mr. THOMAS: In a different hand writing.

Mr. MERILLAT: No, sir, in the same hand writing.

Mr. THOMAS: I don't agree with you about that.

Mr. MERILLAT: We will produce the book itself.

Q. Mr. Thomas testifies that it was understood and agreed that you were to make the title search and that he, Thomas, was to pass on the sufficiency of the title. Is that correct? A. It was to make the title search and as I understand it as a conveyancer and attorney I was to pass on the title as I had in other matters.

Mr. THOMAS: That has all been gone into.

WITNESS: I don't know what Mr. Thomas thought about it. I thought that was called for in the agreement.

Q. Mr. Thomas testifies that when you came up here on June 6th that he read to you from the original manuscript copy and that you held the typewritten copy. Do you remember whether that was the case or not? A. I think they were compared. I think so;  
472 yes, sir.

Q. Please state, if so, whether or not you failed to call his attention to any difference in language or otherwise between the manuscript copy and the typewritten copy? A. I failed to call his attention to it?

Q. Yes, sir. A. I think we went over the copies to see if they substantially embodied the agreement. I don't remember about the exact language. I think we agreed on the typewritten agreement as embodying the substance of the agreement entered into. I don't know whether it was verbatim.

Q. Please state whether or not the power of attorney annexed and attached to the agreement marked exhibit "A. W. T. No. 4," which I now hand you was a part of the typewritten paper which was delivered to Mr. A. W. Thomas on June 6th? A. No, sir.

Q. My question is whether or not that whole paper was together at the time of delivery? A. No, sir, we had two agreements. That typewritten copy was delivered to Mr. Thomas by Dr. Griffith down at Marlboro. That is the way I understand it. I think Dr. Griffith so testified.



Mr. THOMAS: Were you present?

A. I think I was present. I won't be sure about that, Mr. Thomas. I won't be sure about that. I have some recollection about it, but I won't be sure about it.

Q. Mr. Roberts, please state whether or not you have examined the land records of Prince George's County, Maryland, and, 473 if so, whether or not you find this entire paper regularly recorded in its proper place in the land records of said county and as one document?

Mr. THOMAS: That is objected to. I think that the case ought to be properly proved.

Q. Mr. Roberts, now please answer the question. A. Yes, sir, I compared it with the record. Compared it yesterday. I did not compare it yesterday, but I looked at the record. I did not have the copy.

Mr. MERILLAT: I desire now to give notice that as counsel withholds any objection because of the secondary nature of this evidence that before finally closing my case I will put in the record certified copies, beginning with the deed prior to this deed in question and ending with the deed next after this agreement in question; so that I will have in the record a complete transcript of the land records of Prince George's County, Maryland, beginning with the prior conveyance, including this conveyance, and ending with the subsequent conveyance. In order to explain this I desire to say that my purpose solely is to show that this paper is regularly and properly recorded in the proper sequence in which it should come in the land records of Prince George's County, an apparent effort having been made in some way to cast discredit upon the record and upon the paper.

Mr. THOMAS: I still do not see how that helps it any.

Q. Did you make title examination of the original one 474 thousand acres or thereabouts now comprising the Maryland Oil and Development Company's tract of land there? A. Yes, sir, I was interested in it. I did the work for Mr. Evans in the Stewart Building. Mr. Thomas was also there.

Q. This one thousand acre tract? A. Yes, sir, about one thousand and some more.

Q. Was your report as to the sufficiency of the title the one that was taken in that case? A. I don't know. I reported it to Mr. Evans and I never heard anything further about it. Mr. Evans was the attorney in the matter. I reported it to him. I made abstracts and certified it to him. I certified the title to Mr. Evans. I furnished abstracts and certified them to Mr. Evans. I did not make all of them. I made some of them. I could state the ones I did make.

Q. Never mind. Please state whether or not after the death of Ball you were consulted by Dr. Griffith for advice as to the status of this agreement and what he could do in the matter.

Mr. THOMAS: Objected to as not rebuttal and as hearsay any way.

A. Yes, sir, I was.

Q. Please state whether or not you advised him as to his, Griffith's, right of his own motion to end or close the transaction?

Mr. THOMAS: That is objected to.

475 A. I told him he hadn't any right to close it up. Ball was dead and he could act only under the orders of the Orphans' Court in the matter. He would have to submit the matter to the Orphans' Court. He had not the power himself.

Cross-examination.

By Mr. THOMAS:

Q. When did you tell him first that he had no power? A. It seems, Mr. Thomas, that somebody else was trying to get the property and he came to me asked me what he could do and I told him.

Q. I am only asking about the date. A. It was after the death of Mr. Ball, sir.

Q. How long after the death of Mr. Ball—Mr. Alfred Ball? A. I think it was about a week or ten days, sir. That is the best of my recollection. It was somewhere around in there, sir.

Q. The papers that I will ask you about are the papers that have been identified by Mr. Wilson as "E. L. W." on the bottom of the last page and on the back by the mark "A. W. T. No. 4." Now, referring to the typewritten part of these papers, I will ask you whether that typewriting was your typewriter and the one used by you? A. Yes, sir.

Q. Did you do the typewriting of those papers? A. I think I did, sir; yes, sir.

Q. Were you present when Ridgely certified to the acknowledgment on page two of this exhibit? A. I cannot say whether I was present or not.

476 Q. You recognize that as Mr. Ridgely's hand writing? A. Yes, sir, but whether I was there or not I cannot say.

Q. Were you present when Ridgely made this certificate stating: "State of Maryland, Prince Geo. Co. ss: I hereby certify that on the 5th day of June, 1903, before me the subscriber a justice of the Peace of the said State in and for the said county personally appeared Dr. L. A. Griffith and made oath in due form of law that the above power of attorney is true and genuine.

J. ALFRED RIDGELY, J. P."

Mr. MERILLAT: Of course, we object to the competency or materiality of this evidence.

A. I could not say whether I was present when that was done or not. I do not recollect it.

Q. In whose handwriting is the body of that certificate that Ridgely made that the above power of attorney is true and genuine?

A. That is my writing, but I am not sure whether I was present.

Q. The probability is that you were present? A. It may be, but I would not swear to it. I haven't any recollection of it.

Q. What did you do with this typewritten paper, at the bottom of which is marked "E. L. W."? A. What did I do with it?

Q. Yes, sir. A. I think that paper must have been given to the Doctor.

477 Q. Who do you mean? A. Dr. Griffith. I expect it was, sir. That is the best of my knowledge.

Q. Do you know to whom you gave it? You haven't any recollection about it at all? A. No, sir, I have not really.

Q. Do you know how it was that this paper got into the hands of Dr. William W. Stewart and was by him sent for record so that it was received in Marlboro on July 2nd, 1903, for record? A. I know how it got into Dr. Stewart's hands, but I don't know how it got into Marlboro. I gave it to Mr. Thomas or Dr. Stewart one.

Q. Dr. Stewart or Mr. Thomas? A. Yes, sir.

Q. Do you remember which one you gave it to? A. I think it was Mr. Thomas.

Q. When? A. It was about the 6th of June. A day or so after the date of it there.

Q. About the 6th of June? A. Yes, sir.

Q. Did you ever give any original power of attorney to Dr. Stewart? A. No, sir, I don't remember.

Mr. MERILLAT: Of course, to all of these questions counsel objects as to their competency and materiality, and especially  
478 on the ground that this agreement in question could have been effected without any written power of attorney in view of the subsequent ratification; further on the ground of estoppel in Dr. Stewart as the person who recorded the paper.

Q. I wish you would look at the index on this book that has been produced here and tell me whether or not the name of Dr. Stewart appears in the index?

(Witness takes book and looks through it.)

A. I don't see it in the index, Mr. Thomas. I don't think either one of them are there. No, sir it is not because it has not been checked. I don't think I indexed it after that time. I started in on a new book after that. I was not particular about the indexing.

Q. What relation is George D. Merrick, who has testified in this case, to you? A. George B.

Q. Well, George B. A. He is my brother-in-law. I married his sister.

Redirect examination.

By Mr. MERILLAT:

Q. Did you have anything to do with the recording of this paper that has been handed you marked "A. W. T. No. 4." Did you have anything to do with the recording of that paper? A. Which paper is that? The agreement you mean?

Q. Veing the agreement? A. No, sir, I hadn't anything  
479 in the world to do with that.

Recross-examination.

By Mr. THOMAS:

Q. Mr. Roberts, you are one of the counsel in this case? A. Yes, sir, I suppose so. I consider Mr. Merillat and Mr. Ambrose counsel here. I am associated with them.

Q. Mr. Roberts, is Mr. Merrick the same gentleman who is now being sued for divorce in the Circuit Court of Prince George's County, Maryland, charging him with extreme cruelty?

Mr. MERILLAT: I object, of course, to this question. I think it is highly improper. It certainly cannot have any bearing on the testimony.

A. I will answer that in this way: Mr. Merrick sued his father-in-law, Mr. Frank Duvall, in Anne Arundel County, for interfering in his domestic affairs and after this suit was brought they brought this suit for divorce. Yes, sir, he is the same party.

Mr. THOMAS: That is all.

W. EARL AMBROSE, a witness heretofore sworn on behalf of the complainant was recalled in rebuttal, and testified as follows:

By Mr. MERILLAT:

Q. Mr. Ambrose, it has been testified to by Dr. Stewart that when you and Dr. Griffith called there after Ball's death and you  
480 handed him a paper, he immediately handed it over to Mr.

A. W. Thomas, stating that he hadn't anything—he, Stewart, hadn't anything to do with it; that it was entirely the oil company's matter, and that thereafter he, Stewart, hadn't anything to do with the matter and no further dealings with it. A. I have no recollection of any such statement.

Q. Please state whether or not he did as a matter of fact have dealings and negotiations with you after the first moment that you called there?

Mr. THOMAS: Objected to because Mr. Ambrose was called in this case and stated what occurred.

A. Yes, sir.

Cross-examination.

By Mr. THOMAS:

Q. You are of counsel in this case? A. Yes, sir.

Mr. MERILLAT: To end all of that we will simply admit that both Mr. Roberts and Mr. Ambrose are counsel in this case.

Mr. THOMAS: All right.

In sur-rebuttal JOHN W. LYNN testified that he was in the general commission business on Louisiana Avenue and had extensive business with Leapley about four years ago and but little since. He had not heard Leapley's reputation for truth and veracity discussed and over

objection testified his business relations with Leapley were satisfactory. Asked on cross examination who he had heard discuss Leapley's reputation for truth and veracity, witness said, no one.

481 Counsel for complainant moved to suppress the deposition.

Jos. E. FALK testified he was a produce commission merchant on Louisiana Avenue and had known Leapley for about 8 or ten years. He had handled live stock for Leapley on commission. Over objection of complainant's counsel, witness testified that the live-stock business occasioned rivalry jealousy and petty spites, particularly on the part of people residents in the country district.

Counsel asked witness to state whether in the business dealings in the community he had heard Leapley's reputation for truth and veracity questioned in the business line. Counsel for complainant objected to the question as incompetent and improper within the knowledge of counsel. Witness replied he did not know of any man he regarded in excess for his truth and veracity than he did Mr. Leapley; that he had no reason to think otherwise. He could answer personally from his own affairs that he had absolutely nothing to the contrary. Over objection of complainants' counsel witness testified that Leapley had the right to draw on him "unlimited"; that he had cashed drafts for Leapley from forty to two hundred dollars two or three times a week covering a period of 7 to 8 months in a year.

On cross examination witness was asked if he had ever heard Leapley's reputation for truth and veracity and honesty discussed among his neighbors or those acquainted with him with the reply:

482 "I have heard his—Yes sir, I have, and I do not know the man; I have not heard directly or indirectly."

Witness further testified that those he had heard discuss Leapley's reputation for truth and veracity were a number of those Leapley had met in competition.

Asked whom he had heard discuss Leapley's reputation for truth and veracity and honesty, witness said he could not recollect. Witness said his business was that of selling on commission, cattle and produce Leapley would send him, but he did no business for him in the last year. The drafts he had given were usually drafts on consignments of cattle.

Witness again said he could not recollect any one other than a Mr. Bennett whom he had heard discuss Leapley's reputation for truth and veracity, and thereupon counsel for complainant moved to strike out and suppress the deposition.

ANDREW LOFFLER, butcher and sausage maker testified that he came to Washington in 1869; that he knew Leapley and Leapley had bought stock for him for about ten years and witness gave him credit. Leapley was allowed a profit of five dollars a head and would buy from five hundred to a thousand dollars worth a week; that lots of people in market did business with Leapley. Asked what was Leapley's reputation for truth and veracity, witness said

he had always had a good reputation; that was what witness had always heard.

On cross examination witness said his business with Leapley began about 1878 or 1880 so he was dealing regularly with him but  
483 stopped about 1890. He had not heard Leapley's reputation for truth and veracity discussed within the last six or eight years. Asked if he had heard it discussed within the last ten years he said he had never heard anybody say anything against him and never had heard anything in that line at all.

A motion was made to suppress and strike out.

On re-direct examination, witness testified that he had not heard anything for or against him either way. Witness did a great deal of business with plenty of Prince George's farmers and went down there off and on and also owned a farm there but he had never heard any of them say anything against Mr. Leapley; that he has been going down there ever since he has been in this country.

On re-cross examination witness said he never had heard anything come up for or against Leapley.

EVERETT E. PUMPHREY, testified that he lived in Centerville and was the son of Enos Pumphrey and settled the difference between his father and Leapley. Leapley said he did not think he owed his father that amount and his father sued him and got judgment, for sixty dollars, and he settled with Leapley for Thirty Dollars. This was about ten years ago; it was a satisfactory settlement, and as far as he knew his father and Leapley had been friends since.

Complainant moved to strike out all this testimony.

Witness testified that he had heard Alfred Ball say before his death that he had five hundred dollars of the oil company's  
484 money and he did not care whether they took the property or not. He could not say just when this conversation was but it was near his brother's store at Centerville about a week before his death. Witness testified that the relations between Mrs. Tucker, Richardson and Ferguson were bad. Witness testified that Leapley's reputation in the community for truth and veracity were good.

On cross examination asked who he had ever heard discuss Leapley's reputation for truth and veracity he said he never had heard it discussed.

Asked at the time Leapley's houses burned down, three of them, one right after another, if he had not heard his reputation for truth and veracity discussed witness said he did not. He had not heard any discussion at that time. Asked if he heard a number of people make remarks imputing Leapley may have had a hand in it, for the sake of the insurance, witness said he never had heard of it. Witness said he was a brother to Otho Pumphrey. Asked if he had heard his brother say that if Griffith lost the suit that witness would have an opportunity to buy in a part of the farm at a forced sale, witness said he had not heard that.

Counsel for complainant, Mr. Merillat, asked witness if witness



had not said to him right in front of the building where the examination was going on that he knew nothing whatever about this deal and had not heard Alfred Ball talk about it at all witness said that he did but that he had not been asked whether he heard Ball say anything about it.

Q. You did say to me that you never had heard Alfred  
485 Ball talk about the matter at all? A. No, sir, you asked me what I knew about the case and I told you nothing.

Q. Didn't I ask you if you heard Alfred Ball say anything about it and you said, "no, sir?" A. You did not ask me that, no, sir.

Witness said his business was that of keeping a bar on the pike and hotel business.

Asked if he had ever been arrested witness said several times. One charge was for selling a cow in the district with tuberculosis, another was for giving a bad check. He had not been convicted of either charge. He had been arrested in Prince George's County for selling liquor. Asked if he has ever been arrested in any other charge he said no. Asked if he had not been arrested for assault he said he had been arrested for hitting Mr. Armstrong, had pleaded guilty and paid a fine.

On re-direct examination witness testified that as to the check transaction he had given a check in payment of a suit of clothes. The police headquarters had notified parties that if any unknown person gave a check to notify them, that is how he understood it; that is what the police told him. He was carried to the court and discovered that he was the wrong party to the check and that the check was perfectly satisfactory. He understood that some other parties were giving false checks. He had referred them to people who had received his check before and his check was honored. His arrest in Maryland was for selling liquor on Sunday.

On re-cross examination he was asked if he came up here  
486 under subpoena or voluntarily, and replied that he did not understand. Asked if he came up here under subpoena from the court commanding him to come, witness said no, that Leapley had asked him to come and testify as to his character and about settling his father's bill. Asked if he had not been here more than once in connection with this case witness said he had but could not say how many times. Two or three times he thought. He tried to avoid going on the stand. He did not want to come up here.

Asked if he and his brother had not gone to his father Enos Pumphrey to keep his father from coming here witness denied that. He said his father said he was coming and what he knew would be against Griffith. His brother had not in his presence asked his father not to come.

On redirect examination witness testified that he did not know whether he had been a witness to Ball's will but he had witnessed a piece of paper at the request of Dr. Griffith. Mr. Roberts was also there; witness stood outside and when they were ready they had called him in and he had witnessed Mr. Ball's handwriting. What it was he did not know, no one else witnessed it in his presence as he was anxious to get back.

Asked if he had not been before the Orphans' Court and there sworn that he had signed the will of Alfred Ball in the presence of the other witness, Mr. Roberts, witness said no. Asked if his affidavit to that effect was not on file in the Orphans' Court of Prince Geo. Co., witness said if it were there it was wrong. Asked if he had made an affidavit he said no. Asked if a boy had come over and got him to witness a will and not Dr. Griffith, witness said no, that his place was very near that of Alfred Ball's; that he went along behind Dr. Griffith—right along behind the buggy; walked behind the buggy. He supposed they were over there two or three minutes before he got there.

ENOS F. PUMPHREY testified in sur-rebuttal that he had lived on the other side of the road from Alfred Ball for more than twenty years. He was asked regarding any conversations with Alfred Ball, it having been testified that Ball never talked about his business, whereupon complainants objected the question was incompetent and furthermore was testimony in chief and not in sur-rebuttal. Witness said that Ball had talked to him a half dozen or more times and was always regretting to him he had sold his old homestead to the oil company. Ball had told him he would not extend the time at all if it went by and was in hopes they would not pay up so he could forfeit. Ball had never mentioned Stewart's name in any of the talks. Witness said he knew Leapley 30 odd years & Leapley's reputation was good so far as he knew and he had not heard any complaints. He denied telling the Rev. Mr. Marks Leapley's reputation for truth and veracity was bad. Witness said that Mr. Marks at one time while the case was on had handed him a note from Dr. Griffith and witness told Mr. Marks he had had a misunderstanding years ago with Leapley but they were good friends now and he did not want any trouble. Witness said he had told Mr. Marks, when Mr. Marks asked him if he did not have trouble with Leapley, Leapley had sworn he did not owe him a bill but also told him they had fixed it up all right afterwards. Witness said his wife told him not to mix up in the matter and to remember Mr. Leapley's kindness to them at one time and he had thrown the letter into the stove. Witness said the letter stated that witness' evidence would be of great force and that Griffith was paying witness four dollars a day. Witness said he considered it an insult and told Mr. Marks he could not be bought. Alfred Ball had told witness, Griffith had gone over and had himself appointed administrator and that he did not see what use there was in having any administrator, and he hadn't given any authority.

Complainant's counsel asked witness, administrator of what? and he replied "That Alfred said that he was living and did not want any administrator."

On cross examination witness said he was the father of Everett Pumphrey. Asked if Everett had previously testified, witness declared he did not know it if he had and that he saw Everett every day.

Asked if Everett had not told him he had been questioned on the

witness stand last Saturday as to whether he had been arrested, witness at first did not answer the question but finally said that Leapley had told him that, but he had not talked with Everett on the subject. Witness talked with Leapley concerning the testimony given in the case. Witness denied having talked with Mr. Branson concerning Leapley's reputation for truth and veracity.

Asked if he had not told Dr. Griffith he had found Leapley thoroughly untruthful, witness said he may have a little after  
489 Leapley and he had this misunderstanding some seven years ago when Leapley said he did not owe him a bill but that was a misunderstanding. He insisted that his talk with Griffith was at least six years ago, a few days after the trouble, and not within the past two years or the past year. He denied having said anything on the subject within the past year or that he had told Stewart he would not deal with him if he had a man like Leapley around.

He had not told Stewart he would not have a business transaction with Leapley but he did say that he did not want to have any business dealings in the matter at all, but that wasn't anything about Mr. Leapley's character.

Asked if he had not told Mr. Marks and others in his store, Leapley had said he would swear to anything if it was to his interest, witness replied he denied it, but asked whether he might be mistaken said he might have; that we frequently ask who said a thing and when told say we do not believe it but that was not saying that he would not believe a man on oath; it is something else if he is put on oath, he might have only been joking. When Dr. Griffith asked him if he would come to Washington to testify he had not given him any satisfaction.

Asked if Dr. Griffith had not said that county witnesses were allowed four dollars a day for their trouble he said no.

Asked when Alfred Ball told him he regretted having sold to the oil company, witness said that it was last autumn. Asked if he meant last year, he insisted that he did.

Asked if Alfred Ball was not dead last autumn and if he  
490 had not been dead for a year and a half witness denied it and said no. It was in different times during the year after he had given the lease to the oil company that he claimed it was the oil company. Witness said Ball did not say a lease, that they had paid him a forfeit.

Asked when Ball had made the agreement witness said he could not remember but thought it was last of the summer that he had spoken to witness.

Witness denied having said to the Rev. Mr. Marks, Leapley had sworn he had never been behind witness' counter and that witness had shown the books where he had been.

He denied saying to Lum Pumphrey he had found Leapley untruthful. He never had heard Leapley's reputation talked about except in jest. Witness said he never had heard Stewart's name mentioned in this transaction at all. Ball referred to the oil company. It was after the death of James Ball, Alfred Ball had talked to him about Griffith having himself appointed administrator.

Witness did not know what Alfred was talking about, whether James or Alfred's estate. Asked if he did not know that Alfred Ball went before the Orphans' Court renounced as administrator and asked the Court to appoint Dr. Griffith, witness said he did not know anything about it; that he would not have cared to say anything if the preacher had not done as he did.

On re-direct examination witness said Alfred had told him Dr. Griffith had got him to sign a writing but that it was just after Alfred had lost his brother and Alfred said he was in such  
491 grief that he did not know the contents of it—what it was.

On re-cross examination witness said he could not tell what the writing was that was referred to; that Dr. Griffith had made him sign it while he was in that trouble and he really did not know what he was signing.

Asked if he did not know that the only paper Alfred Ball signed after James' death was a renunciation and that he did that in the Register of Wills office where he went himself witness said he knew nothing about it.

In sur-rejoinder by the Complainant, Mrs. ANNA I. MELOY testified she had known both James and Alfred Ball and was distantly connected with them and was not in any wise interested in the estate.

Over defendant's objection that it was not purposed to rebut any particular conversation testified to by any witness of the defense witness said she had talked with Alfred Ball the day they buried James. Witness had asked him if he was going away and if he had sold his place and Alfred had replied, yes, and jingled his money, whereupon witness asked him if he had sold to the oil company. Alfred replied that he had sold to Dr. Stewart, and had received part payment and would get the balance in November and was not going away before then; he said he was going to bury his brother at Centerville. Defendant moved to suppress the deposition.

GEORGE S. HARRISON, a farmer and election registration officer, testified to Alfred coming up to register in September or October before his death. Witness did not know him for he seldom  
492 came there, but some others talked to him and Alfred said,

Dr. Stewart not being present and over objection, Griffith had sold his place for him to Dr. Stewart. Some one wanted to know if it was a *bona fide* sale and Ball had replied yes, that he had gotten five hundred on it and got forty dollars an acre and expected to get ten thousand dollars for it. Asked whether he had said anything about having sold only an option, he said he did not know about that.

RICHARD W. HEREFORD, a rural free delivery carrier, testified over objection that no foundation had been laid, that Enos Pumphrey had told him if he had any suit with Leapley he could summon a dozen men and none of them would believe Leapley under oath.

On cross examination witness said he was a brother-in-law of Leapley and not on good terms with him.

On re-direct examination witness said he had been summoned to come here.

GEORGE S. HARRISON was recalled and in answer to defendant's counsel said that since coming Dr. Griffith had given him a check for four dollars signed as the executor of the estate.

Witness said this was his, witness', fee for coming here, asked why he told defendant's counsel he did not know what it was for he said he had never looked at it.

RICHARD HEREFORD recalled by complainant said that when the marshal summoned him he had given him four dollars and twenty-five cents as his fee and made him sign two receipts one to be deposited in court.

493 CHARLES H. MERILLAT, counsel for complainant, testified that on the day Ferguson and Flynn testified, Everett Pumphrey was here and witness asked him what he knew about the case and he said nothing and that when asked further if he had had any talk with Alfred Ball concerning the sale of the farm prior to his death he had responded none at all.

Dr. GRIFFITH said he had introduced Mr. Merillat to Pumphrey and Mr. Merillat had asked him the questions testified to by Merillat and received the answers testified to.

Dr. Griffith denied previous testimony of Vincent Richardson and said Vincent Richardson rendered a bill for one hundred dollars for services and that when witness told the court he would refuse to pay it the court disallowed it.

Witness said he had paid all witnesses coming from the county four dollars, no more no less, because that the established witness fee. He had not asked them to say anything that was not so.

JOSEPH K. ROBERTS testified that he was with Dr. Griffith when they met Vincent Richardson and over objection that Richardson had testified to no conversation in the presence of Roberts, said that the doctor had told Richardson he would not lose anything by coming out but would be paid whatever his days' wages were. Counsel put in evidence testimony showing dismissal of the law suit in Prince George's County, the disallowance of the claim of Vincent Richardson by the Orphans' Court and an affidavit of Everett Pumphrey filed in the Orphans' Court that he witnessed the will of Ball.

494 Counsel for defendants offered in evidence a certified copy of the suit at law dismissed by complainants and a certified copy of an inventory showing the Ball tract was appraised at eight dollars an acre and an inventory of the personal estate of Alfred Ball which did not state the amount of cash in bank at Laurel, & same is marked "Exhibit Rebuttal 1 and 2."

Complainant's counsel objected to all this matter as incompetent and immaterial and further that the custom in Maryland Probate Courts did not require cash in banks to be reported until a final account was rendered, but only personal effects of unknown value.

VINCENT RICHARDSON recalled by defendant testified Dr. Griffith made him an offer to come here to testify against Dr. Stewart.

On cross examination witness declared the offer was before he had first testified in the case and that Griffith had told him if he did not swear in his favor he need not expect any money from the Orphans' Court. He had not been paid by the Orphans' Court.

Witness said he came here voluntarily at the request of Leapley.

#### ABSTRACT OF SUPPLEMENTARY TESTIMONY.

##### *Evidence for Defendant.*

WILLIAM R. SMITH, Register of Wills, of Prince George's County, produced and there was placed in evidence the will of Alfred Ball, filed by Dr. Griffith November 17, 1903, marked Exhibit J. A. S.

No. 1 and also a long power of attorney filed the same day, 495 marked J. A. S. No. 2. Both had remained in his office ever since. Asked to identify the signature of John W. Belt witness at first said it was his signature and that he had seen it very frequently, but later said he would not be positive, it might be a clerk's.

On cross examination witness said the subpoena to him called for production besides the will & long power of attorney of the renunciation signed by Alfred Ball July 2, 1903, and the bond July 10th also signed by Ball, and over objection of defendant complainant put the papers in evidence subject to future proof of handwriting. Over objection as not proper cross examination witness said Dr. Griffith never had seen the long power of attorney out of witness' presence to the best of his knowledge. In the fall of 1903 A. W. Thomas had called at the office and been handed all the papers relating to Alfred Ball's estate. Mr. Thomas examined them in the same room with witness, but at a table 20 or 30 feet away. Mr. Thomas' visit was for the purpose of examining papers and taking copies. Recently Dr. Stewart had examined and photographed two of the papers. By the renunciation offered in evidence by complainant, it having been subpoenaed by defendant, Alfred Ball renounced as administrator of James Ball's estate in favor of L. A. Griffith, and by the bond of July 10th Ball became one of the sureties on the bond of Griffith along with J. K. Roberts, all three signatures being witnessed by Alan Bowie.

SUSANNA MAYHEW produced and defendant offered in evidence a deed from Alfred Ball to her dated in 1885.

Complainant objected that the date was too long prior to be admissible and made the same objection to a deed produced 496 from Alfred Ball to James Richardson made in 1895, marked respectively Exhibits Supplemental No. 5 and 6.

WILLIAM J. KINSLEY testified that he had examined handwriting in 631 cases in twenty-six states in the United States and Canada. He had examined handwriting for the District Attorney in New York, New York County, Kings County, Brooklyn, Bridgeport,



Connecticut and other district attorneys throughout the United States. He had examined and compared the ratifications, long power of attorney, Richardson and Mayhew deeds and will. He had examined the short power of attorney.

"I made careful examination both with the naked eye and with microscopes of the handwriting on the Ratification and particularly the signature Alfred W. Ball. I compared that signature with the signature to the will. The result of that examination has led me to the conclusion that one hand did not write both. My reasons for that are that in the matter of pen pressure there is a distinct difference between the Ratification and will signature.

The Alfred W. Ball on the will has pressure in different places from the pressure in the questioned signature on the Ratification, which has an altogether different alignment.

The will signature has wide departures from the alignment, that is the letters approach or recede from an imaginary base line in an altogether different manner from the signature on this document (the Ratification) Besides that the base line is sloped; the general trend of the base line in the ratification signature is different  
497 from that of the will. In the will it has more of an upward tendency, and more variability from an imaginary base line.

Counsel for defendant asked witness how he knew the signature was disputed & who had told him & he replied he would use the word questioned.

In the signature on the Ratification the spacing between the letters and parts of letters between the Alfred and the initial W, and the W, and the B in Ball differ from the spacing in the standard.

In the matter of speed the Ratification signature is written faster as shown in the equality of the line itself than shown on the standard signature to the will.

In the matter of movement the signature on the Ratification displays a freer movement than that to the will.

The Ratification signature has a little more slant than the will signature.

The initial A in Alfred in the Ratification lacks firmness and decision and the extra heavy pen pressure shown in the standard signature to the will.

It is also too far away from the following up stroke as compared with the standard. The spacing between the main stem of the A and the down stroke is too close. The A is too angular, too pointed at the top.

The small L starts in a different manner from the L in the standard (Will) which had too rounding a turn at the base line. All the time now I am talking about the Ratification signature and criticising that signature as compared with the standard. The loop is too well defined in the ratification small L.

498 The small F is not properly proportioned. It is too short even below the line. The standard F makes it by far the tallest letter above the base line. It stands way above the other let-

ters. In the Ratification signature this is not true. It is slightly above the top of the initial A.

The method of joining the F to the small R is different in the ratification from the standards.

The small R in the ratification signature is made in a different manner from the small R in the will signature. The one in exhibit E (Ratification) is too well formed. It is a finer type of small R and much nearer the copy book ideal. The union between the R and small E in Ratification lacks the dropping of the curve as shown in the standard—too nearly straight and the small E does not stand up to the height or relative proportion that it does in the standards. And the E is too flat in this questioned signature. This is occasioned in my opinion by the method of construction because in the ratification it is almost the Greek E in form. It is a hybrid form and in my opinion it was started as a Greek E and an attempt was made in construction to change it into a looped E and produced a hybrid form. The E is not high enough—does not have the loop standing up and down, and the down stroke has the curve more nearly resembling the Greek E and altogether lacks the loop shown in the small style of letter.

The method of bringing the small E over towards the D is distinctly different in the two signatures, that is the Ratification and Will signatures.

499 In the Capital W in the Will there is more of a roundness connecting the two main down strokes while in the Ratification the connecting part is an angularity, showing a distinctly different type of letter.

In one there is a left curve roundness, that is in the standard, the up curve being rounded more, while in the ratification this up stroke is a right curve and has an angularity showing at the top rather than the turn.

The middle part (W in Ratification) is higher in proportion to the final strike than in the will.

In the will it has more of a hook or turn at the top in the finishing part of the W and more emphasis than at the same place in the ratification.

In the Ratification the periods, the punctuation marks are too low as compared with the standard. The first one in the small D is much lower than that of the standard and the same is true of the punctuation following the W.

In the Ratification it is down below the letter quite a distance whereas in the standard it is almost half the height of the letter, measuring up from a base line.

The Capital B's are a distinctly different type. The same number of strokes about are made but the movement as I stated before being different produces different results.

In the Will the B is based on the old Spencerian oval like form, the initial stroke beginning at the top and coming down, and in the copy book form, making a full oval with the next stroke—the

500 oval is clear, open, broad enough and clear cut to be readily observed. And then the stroke travels up over the top of the initial stroke and rounds at the top, coming down almost vertically, forming an *angle rounded out* and finishing above the base line. In the Ratification the initial stroke is practically a straight line. It is retraced at the bottom about half-way up instead of forming an oval and instead of being carried over the top of the initial stroke it is carried to the right of that and but a very little higher than the beginning point of the initial stroke. It then comes down so as to form a fairly good figure 3. In fact the Capital B resembles the figures one and three making up 13 and when the Capital B is compared with that of the standard, the will signature, *their* will be readily seen the distinctive difference in method, construction and in technique.

Also the finishing part of the B in the Ratification drops down *below* the lowest part of the first down stroke of the letter. The opposite is true in the will signature. The finishing stroke of the B in the Will signature is above the base line whereas in the questioned signature it is *below* the base line. Now this is distinctly a different method of construction, and in a slow writer, as I judge the writer to be from the signatures I have here as standards, he would not be so apt to slip and to vary in his handwriting as a more facile, ready, dashy writer would. I think he would be more *constant* and *consistent* in retaining a character of this kind.

The small A in the standards is large in proportion but it is even larger and the oval better made in the Ratification. The initial part of the A in the Will begins more nearly like the copy book form, whereas in the ratification it starts with an emphasis and travels up a little more. The turns at the bottom of the A and the next L in the Ratification are fuller, rounder, than the corresponding points in the standard signature, the standard signature, has practically angles at those points rather than turns.

The finishing stroke of the small L in the standard, the last L is the one place that shows just a little touch of speed. From my observation and study of handwriting I find that people who write a slow, cramped hand, will often times make a little flourish with the pen at the finishing point, and that is true in regard to the standard signatures.

And there has been an attempted simulation on that point in the Ratification signature but not with the same proportionate freedom.

The balance of the questioned signature (Ratification) has more freedom than the standard, and there is no greater freedom, or very little, in the finishing strokes of the balance of the ratification signature—In the standard writing the hand is distinct, individual, peculiarly personal, contains quite a number of distinctive characteristics. And in the questioned signature (Ratification) I don't find any one to be present; whether it is alignment, base line, slope, pen pressure, shading, speed, spacing, movement, and proportioning, everything that enters into the characteristic make up of the normal, natural handwriting, is, in my opinion, missing from the Alfred W. Ball signature on the Ratification when compared with the will.

502 The Richardson deed in all comports fairly well with the will signature and I used that also as a standard. I examined the long power of attorney and compared that writing with the standard signatures and arrived at the conclusion that the hand that wrote the standard signatures, especially the will, was not the hand that wrote the signatures Alfred W. Ball on the long power of attorney. And the reasons are substantially those applicable to the ratification except there is no small E in the long power of attorney. But in regard to the construction of the Capitals W. A. B., the small L the small F-R-D-A and the two small L's all the reasons hold good—I attach great significance to these differences because the characteristics in the standard signatures are decided and strongly marked. They are peculiar and personal to this writer. They are sufficiently numerous to make the law of probability such that they could not be worked out in a handwriting as shown in these disputed signatures. Every one of them is practically missing. I cannot conceive of any conditions under which the writer of these two questioned signatures could have been made that would have produced signatures so foreign to the standard writings, and that would eliminate from these two signatures these strongly marked and numerous characteristics found in the standards—the presence of these characteristics in a sufficient number would pronounce a signature genuine. Their absence denotes that the signature is not genuine.

The signature of J. Alfred Ridgely on the long power of attorney in my opinion was not written by the same hand that wrote  
503 J. Alfred Ridgely on the short power of attorney. There is a difference in the pen pressure, proportioning, construction, *pen pressure*, base line slope, alignment movement and speed and many differences in construction of letters throughout. They are sufficiently numerous and strongly marked to make it practically certain beyond the bounds of probability, I think that a mistake could not be made in saying that one hand did not write both.

He attached great significance to the difference he had noted in the height of letters and other changes because the characteristics in the standard signatures were decided and strongly marked and peculiar and personal to the writer, and every one of them was practically missing in the disputed signatures. They were sufficiently numerous to make the law of probability that they were not the same, and said he could not conceive of conditions that would have produced signatures so foreign to the standard writing. The law of probability was founded on habit which by countless repetition became parts of the person.

Witness said that the signature J. Alfred Ridgely to the long power of attorney was not written by the same hand that wrote J. Alfred Ridgely on the short power of attorney marked E. L. W. June 4, 1903. He said there was a difference in these signatures in proportioning and construction, pen pressure, base line, slope, alignment, movement, and speed, and many differences in construction of letters. They were sufficiently numerous and strongly enough

marked to make it practically certain beyond the bounds of probability that the same hand did not write both.

504 On cross examination witness was asked if the person who wrote J. Alfred Ridgely on page 2 of the agreement of sale wrote the same name on page 3, but said he had not made an examination of the papers in these two and could not pass on them off hand; and when asked to take his own time said it might take him a day or more. Those papers he had testified concerning he had seen in his office on April 6th. Asked what papers he had seen in the original in New York he said he could not say which papers he saw in the originals and which in the photographs except as to the Richardson deed. Witness admitted that several days before he testified he knew which papers were the standards and which ones he was called to pass on as not the signatures, as a matter of fact he knew certain papers were disputed after he examined them a little while. Asked if the only originals he had seen in New York were not papers 8 and 18 years prior to the disputed papers, he said he could not say, some of them were dated 1902. Asked if he had the original of any paper of which he had a photograph he replied yes, and asked what, said maybe he was mistaken. He could not recollect. He could not recall whether he had seen the original of either power of attorney before today. He had made his study upon the photographs and gave a provisional opinion which he confirmed by his examination of the originals.

Asked when he had seen any original papers to-day he said he judged about 10:45, whereupon counsel for complainant interjected the fact was the witness saw no papers until after 11:00  
505 o'clock when Mr. Smith, the Register of Wills, came into the room. The witness said he thought he had as a matter of fact seen these original papers more than one-half hour before testifying, and that he had examined some originals in New York & some photographs and wanted to confirm the opinion formed upon the photographs.

He claimed it was a twisted statement to say that he was able to give all the differences he had testified to, and yet would not be able without a day's examination to see if the same hand wrote J. Alfred Ridgely on pages 2 and 3 of the agreement of sale.

Witness said his fee for the examination made in N. Y. was \$50, and he knew he was to testify and get an extra fee of \$50 and expenses for testifying in Washington if the originals bore out the photographs. Witness said he had lectured upon handwriting, and admitted that in his lectures he called attention to all such matters as variations in movement, slant, spacing, speed and proportioning. In his opinion the same hand he said that wrote the signature to the long power of attorney wrote the signature to the ratification.

He said he could not say if the ratification bore more marks of resemblance to the will than the long power of attorney did; he did not find any resemblance except the names were spelled the same between the power of attorney and the ratification signature in comparison with the will signature. Asked if there were not some marks of similarity he said the names were spelled the same and

506 there was the same type of capital letters and the same simulation of slant and alignment, but they differed even in those particulars. Both the long power of attorney and the ratification were so far away from the will signature they could not be said to resemble each other. The will signature was the best written of all the standards he had seen. He again said he had not examined and was unable to pass on the Ridgely signatures on pages 2 & 3 of the agreement. The main part of his business was that of a professional expert on handwriting.

Witness under objection said it would not change his opinion if two witnesses of unquestioned veracity should swear they had seen the man who wrote the will signature write that to the long power of attorney. It would not tend to alter his opinion if it appeared as a matter of fact that the money set forth in the paper known as the ratification had been put to the credit of the man who signed the will and remained to his credit for five months, and that he died about 30 hours before time for consummation of the agreement on account of which the power of attorney and ratification were drawn; the value of his opinion depended upon his divorcing extraneous considerations. Witness admitted he would put his opinion based on an examination of three or four signatures as worth more weight than attendant circumstances and witnesses to the signatures. If Ball were to come back to life and swear he wrote them all he would retain the same opinion, because he had tested it and had deceived people by writing their names so they could not tell.

507 Witness was asked if he saw the signature to either the bond or renunciation before testifying and said he believed not. He could not remember whether Mr. Smith had produced them all before him at the same time. Witness was asked whether the renunciation and bond signatures were written by the person who wrote the will signature. Counsel for defendant objected that those two former papers were not in the case for comparison or otherwise.

The witness declined to give an opinion as to whether the man who wrote the will signature wrote Alfred W. Ball to the renunciation and bond. He had no opinion on the subject. Thereupon the witness was asked to take the 30 minutes or so counsel claimed he had had today to compare the original papers he had talked about and devote it to the renunciation and bond, but said he could not be made to give an opinion he had not formed and that he did not decline to examine them but warned counsel that he did not think he could give an opinion before tomorrow; that if photographs are good they are proper to examine if you have a chance to compare them with the originals. He had had more than 30 minutes to examine the other originals, because the major part of his examination was based on the photographs.

Asked if he regarded two or three signatures sufficient for positive opinions he said he liked to have all he could possibly get of about the date of the disputed signature. Asked if he regarded a signature 18 years old a good basis he said not ordinarily, one 8 years old is better.



508 He said that habit largely fixed signatures, but asked if a man who wrote very seldom then would have greater variations than a man of daily correspondence he said no he would expect the rare writer to have a constantly fixed signature because he would not have facility of hand to wander much and would have but one mental conception of letters & would not have the facility of hand to wander. The man who wrote very seldom would have a very fixed signature and people in office acquired rubber stamp signatures but it was the man who wrote moderately every day whom he would expect to have a variable signature. He thought all three signatures in those he had designated standards were quite consistent and he finds very few variations in the signature of persons who are illiterate.

As to the Ridgely signatures he said it would not alter his opinion if Ridgely should say he had written both signatures, in witness' opinion Ridgely did not. Asked if he had been informed the Ridgely signatures were disputed he said he knew himself it must have a material bearing and had asked if the Justice was dead, and could not come forward and testify and then upon comparison he had said that the same person did not write both Ridgely signatures.

Witness said the man who wrote Alfred Ball on the ratification also wrote the body of the ratification, over objection that it had not been gone into in chief. He would not pass he said on the point whether the interlineations in the long power of attorney were written by the same person who signed Alfred Ball. Witness said a cramped hand might be produced by a man gripping a pen in a cramped manner, but a cramped hand meant more than that. Witness said he had asked for more standards, but was told those

509 were all there were. He did not regard three signatures as insufficient to form a positive opinion considering he said that they were not all written at the same time, but are scattered over wide periods, and represent the habit of the writer.

Asked if he would not regard the renunciation, the bond and the will written near together as a better basis than deeds 8 and 18 years old, he said yes so far as date was concerned, but he was not passing on those signatures which he had not seen.

On re-direct examination witness said he thought the writer was a consistent writer, and while other people will break in a year or a few weeks and will go to pieces this Ball handwriting is consistent in the standards through a period of 18 years except that he wrote better 18 years ago than in his last writing.

On recross examination he said illness, mental condition, the death of an only brother, temperament, environment, conditions all would have a tendency to affect handwriting and so would position at the table, but he could not see how it would make him write better than before. It was all largely speculative to go into it in a hypothetical case. He claimed that the disputed writings were better signatures and better writings than the standards, and this he regarded as important: the influences and all that, are speculative but he had physical facts here in the standard and disputed signatures.

EDWARD M. SCHAEFFER, aged 63 years, a physician who had devoted some thirty or more years to chemical examinations  
510 almost entirely and had testified as a handwriting expert in various cases in the District, Maryland, Virginia, New York, Pennsylvania & other states, said he had examined the papers with the Ball signature in the pending case. They were the ratification, the will, the contract, the long power of attorney, the short power of attorney, the Richardson & Mayhew deeds & the Jim Ball power of attorney.

Q. Have you an identifying mark on that? A. I have a mark that I examined it on the back in pencil. I examined it on the 23d of March, and also photographs, examining them the same day. Witness said it was his belief if the will signature were true that the signatures of the ratification and long power of attorney were not genuine. He based his opinion from a comparison of the individual letters and the general appearance, the size of the letters, angle of inclination, degree of firmness of pen pressure and a dissimilarity or similarity of the shading in the different writings. Witness said in the will signature the letters were formed very large and plainly with much base-line irregularity. They appeared to have been written by one not in the habit of doing much writing or possessed of much facility in the use of the pen. In the Jim Ball power of attorney the base-line variation was less and there was more tendency to unite letters. A striking difference between the will and the long power of attorney was that in the will Ball had removed the pen from the paper three times in writing his first name, and in the long power of attorney it had not been removed once. The Ball  
511 signature to the ratification differed materially he said from both the signature to the will and in a less degree from the power of attorney, and the witness went into details as to formation of the letters. He also gave some of what he regarded as similarities. The witness said that taking the will signature as the standard he was of opinion the Jim Ball power of attorney was written by Alfred Ball and also the Mayhew and Richardson deed signatures. Ball's writing showed he did not write very frequently. The Mayhew deed showed a much more even line of arrangement than the signature to the will and the Richardson deed, probably owing to the latter being written on unruled paper. Counsel asked the witness if he had adopted as his standards the Richardson deed, the Mayhew deed, the will and the Jim Ball power of attorney and witness said he had. On complainant's counsel asking defendant's said they would admit on the record that they conceded the Jim Ball power of attorney to be genuine.

Witness said the signature to the long power of attorney and the ratification he regarded as presenting features of resemblance to each other while the other signatures in his judgment formed another group. The long power of attorney's signature presented so great a difference from all the standards that at an early point he had desisted from further close study, being satisfied. Witness said that while Ball did not always write a precisely similar autograph, the

care with which he had always formed in the standards the initial letter of his name, was calculated to cast doubt on his signatures to the two papers in dispute. The capital "B" in them was constructed on an entirely different plan from the one in the standards. Further, the ratification was somewhat longer than the standard and the long power of attorney was nearly one-half inch shorter.

Witness said — the signature of Ridgely to the different papers he had examined and if the other Ridgely signatures were genuine the one to the long power of attorney was not written by Ridgely.

On cross examination witness said he first examined the papers March 12th. He denied in his direct examination he had said he was first called on to examine them March 23d. He examined several on the 23d of March. Asked when he first gave an opinion he said the first day he examined them. He denied his first examination was made March 23d. Asked if during a recess in his examination he had not handed a slip of paper in reference to matters in his examination to the defendant or his counsel witness said he handed a note to Dr. Stewart. It may have been about the pending case he inferred.

Asked if he did not know it was improper for a witness to offer suggestions concerning his examination when on the stand he replied he had not stated he had written out a suggestion.

Asked what it did concern then witness said it had escaped his memory, and he was unable to say whether it concerned matters as to which he was under examination. Part of his present occupation was that of tutoring and at the time of consulting Mr. Merillat professionally about it. Asked if he regarded it as unusual or

513 gravely significant that on the will signature the alignment was irregular witness replied merely as indicating a want of command of the pen. Asked if it then did indicate a lack of command of the pen he said it showed the man was not used to writing much without lines. He admitted the ratification and the Jim Ball power of attorney had lines. Asked if it was gravely significant the will signature was  $\frac{1}{2}$  of an inch shorter than the ratification he said he did not. The witness did not think the fact that there was a seal at the right would account for any differences because there was room to the left. It was true the writer had compressed the last two or three letters in both the long and Jim Ball powers of attorney and the signature to the former being longer infringes on the seal. He would not consider it improbable a man without much command of a pen would do this. His attention being called to respects in which the Jim Ball signature agreed with the signatures he said were not genuine witness denied his testimony was because he knew the Jim Ball power of attorney had no importance in the case. He only knew the papers by their designations A. B. C &c. When employed he knew which paper was the standard and was employed by Dr. Stewart but did not know what he *he* was expected to find. Asked if the ratification did not tell him Griffith was Ball's agent and that Stewart was on the other side of the litigation witness replied he did not read the ratification but devoted his attention to the signature

almost entirely. Asked if he formed any opinion as to the identity of the person writing the signature and body of the ratification witness said he did not go into that as he did not wander  
514 into side questions. Witness had been paid one fee of \$15 and two others of \$10 each and it was understood that for further work and examinations he was to get additional pay which was not definitely fixed. He admitted that all the signatures showed an irregularity as to the base-line, most marked in the will. Asked if he had not refused to tell Mr. Ambrose who had called when he first examined the papers in the case witness said he did not refuse absolutely, but told him he must see Dr. Stewart before answering. Asked if his affidavit was not made subsequently to March 23d witness replied he had not the date before him. Counsel asking that the date might be inserted from the affidavit previously given witness said that he had ascertained about it and now knew he had made the affidavit March 27th.

Witness said the man who imitated Ball's signature was more skillful in the ratification than in the long power of attorney, but he was certainly not skillful in imitating other men's names if he had any standard before him; that he regarded the long power of attorney as a poor imitation. It was not such an imitation as a skillful or experienced man would make. Asked if he had observed about the signatures as described and which he said were imitated anything that none but a trained skillful man would make witness said the question as framed was too ambiguous. He thought it was significant that Ball sometimes had put pressure on one part of his signature in the will and on another in the long power of attorney. The  
515 ratification signature was by all means the best signature Ball had written. In his opinion there was a strong probability that the person who wrote the signature to the ratification also wrote the body of it. There was a family resemblance between the signature to the long power of attorney and the ratification sufficient to connect them by family resemblance but the latter was a much closer resemblance to the standard. He had not observed any characteristics that were alike in all four signatures to the will, the ratifications, the long power of attorney and the Jim Ball power of attorney. There were no characteristics common to all four, and he did not find in the disputed two the characteristics in the will and Jim Ball signature. They were all letters and the character of the letters is generally to be distinguished, and in that respect there is a resemblance. He did not consider there were many dissimilarities between the Jim Ball signature and the Mayhew deed. Asked to give his opinion as to the signature to the renunciation and to the bond witness said he would prefer to have additional time and would only say they presented a greater resemblance to the standard than did the signatures to the long power of attorney or the ratification: but the question was objected to because the papers not being in the case for any other purpose were not standards of comparison. Witness admitted that in his examination last week he had been asked to examine these two papers, but said he would have to have more opportunity as he had seen the papers only a short time. In answer to

further inquiries he said Mr. Smith had taken the papers from him while he stated he was examining them to go to Marlboro; 516 that he had them before him from 3 to 5 minutes but admitted he had not asked to see them longer, and did not want to examine anything that was taken from him.

Asked if he would place his opinion against the testimony of gentlemen of good repute and a Justice of the Peace who had witnessed the signatures, witness said that the statement of such a witness in the absence of information as to who he might be and in ignorance of the value of his testimony would not shake his opinion where he was convinced the writings did not conform to the standards, and if the deviation is so great as in my experience as to be impossible to have been written by the person whose name it purports to give. An honest justice might make a serious mistake as to papers passing through his hands.

Asked if a man of unquestioned repute would say he had written both the Ridgely signatures to both powers of attorney witness said if the deviation was so great as to make that impossible he undoubtedly would put his opinion against the testimony of the man who said they were both his, even though he should say he remembered distinctly writing them and was of good repute, as experience convinces him that honest men make most serious mistakes as to papers passing through their hands. He would certainly be of the same opinion even though two men of good repute should say they had seen Ball write the signature to the Jim Ball power of attorney and the long power of attorney. Expert handwriting opinion was not infallible, but he regarded it as sometimes far better than the testimony of persons of good repute who said they had seen it written. He declined to pass judgment on the renunciation

517 and the bond. Witness was asked if there were dissimilarities in the standard signatures and said that while they were variable in minor points, there was a sufficient family likeness for one who had carefully studied them to include them in the same category. Witness admitted that inexpertness with the pen and infrequency of writing would produce variations. He did not think age would, but the condition of health would. Asked if he would expect much irregularity in the signatures of a man who rarely had occasion to write witness replied that from his insight into the case Ball had considerable occasion to write of late years, saying he would wish his answer not to include his case. He further said he could not answer the question without knowing other circumstances. Asked if he would expect uniformity rather than irregularity where a man had very little control in writing witness said he would not, but he did not regard good control as necessary, as the idea of letters in the man's mind had as much to do with ultimate shape and character as muscular control. Asked to compare the "L" in Alfred in the Mayhew deed with the "LLs" in Ball and if they did not show very considerable differences in the one signature by their position, their slant, and other respects, witness said counsel has asked me to compare two L's in the Mayhew deed with the two L's in Ball without specifying whether he means all of those and counsel, asserting he

did not ask that repeated the question and witness said it was true they did present considerable differences. While the Richardson signature was painted it was the same hand that wrote the Mayhew deed. Asked if he would not expect to find a number of  
518 differences where a person had small command of the pen he said he would expect small or large differences, either. He said there was marked difference in general appearance between the Jim Ball and the will signature, both of which he had said were genuine. He would not be surprised to find differences in size of signatures written at different times by a man with little control of the pen. He did not find much similarity between the signatures to the will & ratification but the latter did resemble the will signature more than the signature to the long power of attorney itself. It wanted some peculiarities found in the will signature, however, and he noted it had at least one peculiarity found in the body of the ratification—the small “E” in Alfred.

Asked then if he had not as a matter of fact examined the body of the ratification sufficient close to discover a certain “E” in it that he might term as being the same kind of an “E” as in the signature witness said he went over it with sufficient care to find nineteen D’s and compared them with the D in Alfred but denied he had examined the paper with care enough to know its meaning. He said circumstances, health, condition, pen, ink, and position, all might cause variations, though age alone would not necessarily do so unless some of the infirmities incident thereto supervened. He could not say whether the typewritten part did not show that the man was composing on the typewriter and was not very skillful at writing. Asked as to the 160 if it might not be 150 and if he might not make the same error he did in saying E. L. W., the examiner’s initials  
519 were E. S. W., witness said no, he could not make any such error, because the dash at the top of the 5 was wholly wanting. It was either a 6 or another digit. The typewritten part showed curved outlines and the figure next to the 0 was not a 1. It was some curved outline, though he had thought it a 1 on viewing the photograph. The handwriting in the body of the ratification was a quite characteristic and fixed hand. This he thought would have very little to do however with forging other handwriting. The handwriting was a very easy, flowing handwriting. The signature he did not regard as a cramped signature, or a cramped hand, but as a slow signature. The standards he thought were written by a cramped hand. In the standard signatures while the letters seemed to be started with some deliberation, they showed as a rule very little tremulousness or lack of free movement when started. Witness denied this was in contradiction of his testimony that the writing showed the man had little control and said he was repeating his former answer in substance.

On re-direct examination witness said that he thought the idea in the mind as to the method of forming was such that no matter if there were lack of control the person would not change his life-long plan of writing and the conditions which change ones writing have very little effect upon his characteristic.



On re-cross examination witness said he did not agree with an expert who would say the character of the hand might completely change in a few weeks, if completely change means the loss of all the characteristics.

520 Asked if he noticed any peculiarity common to all the signatures that was so minute and yet distinctly peculiar, witness said he had not. Asked if there was a distinctive characteristic that would be discernible to such a man as a Treasury expert and yet was so minute that none but an expert forger would observe it witness said that he had not observed any such peculiarity.

EDWIN B. HAY, an attorney at law, and handwriting expert, testified that in his opinion if the signatures to the will, Mayhew & Richardson deeds and the Jim Ball Power of attorney are genuine the signatures to the Ratification and long power of attorney are not genuine and that in his opinion the Ridgely signature to the long power of attorney is not genuine if the signature J. Alfred Ridgely to the Jim Ball Power of attorney and to the contract are genuine.

On cross examination witness said he also was president of an insurance company, the head of a paving company, and a lecturer on Shakespeare. The Jim Ball and will signatures had been submitted to him as genuine and therefore he assumed they were written by the same person, notwithstanding there was a marked difference in their general appearance. Witness answered affirmatively a question whether there was a marked dissimilarity between them and said he had accepted them as genuine because informed they were. Handwriting examination was not infallible. Asked what degree of probability then he would attach to examination of handwriting where the signature was that of a man with a variable signature with marked differences as he said was the case in the Jim Ball power of attorney and the will signatures witness said loyalty to the  
521 art caused him to be prejudiced in its favor but the degree of comparison differed with different writers and in different papers. Infirmary would have its effect and also conditions under which made. The fact that a man rarely had occasion to write or to acquire fixity would have a very marked effect on signatures. The writings before him did not indicate intelligence in the writing. The Jim Ball and will signatures showed great variability, not only in alignment, but in formation. He would naturally attach much importance to the great variance the will signatures showed from alignment, but of course conditions, the position of the writer at the time and the situation and the lack of lines would have effect. The will had a tremulousness about it which did not appear in the power of attorney signature. Such a thing as a signature being written on a desk with the hand resting or movable might have its effect. Witness said as an expert testifying from comparison he would eliminate from his opinion the testimony of witnesses that they had seen the party write both signatures, so as to be uninfluenced by anything save comparison of the writings, and as a handwriting expert would not allow such questions to affect him.

Q. Please examine the signature to the handwriting of the body of the ratification and state whether or not it is a free and easy hand? A. It is a free and easy hand and an excellent business handwriting for any individual. It seemed to be a characteristic handwriting of an individual, one that was undoubtedly fixed by the maturity and age of the writer. The ratification and long power of attorney signatures he regarded as irregular signatures, but not tremulous. Both indicated much control of the pen. There is more difference between the length of the signatures to the ratification and long power of attorney than in the formation of the letters.

Asked if the same person wrote the signature to the bond and the renunciation as signed the will and the Jim Ball power of attorney, he said he thought so. Asked if he did not discover marked differences between signatures to the bond and renunciation and the signatures to the will and Jim Ball Powers of attorney witness said he found a number of particulars in which they resembled each other, but they were dissimilar in pictorial effect. The will signature was written on thin tissue paper, which would have a very material effect. Asked if all four signatures showed material differences in execution, he said he found resemblance in a number of particulars but dissimilar in its general or pictorial effect. It seemed to be natural to the writer to execute signatures with some difference in characteristics. The Jim Ball power of attorney, the bond, the ratification and long power of attorney exhibited a disregard of base-line. There was a much less difference in the Mayhew deed than in the other papers. Asked if this might not be due to the fact one was written 18 years younger and when eye-sight was better witness said these were very important conditions. Eye-sight infirmity would cause considerable irregularity.

523 Asked if he would say a reputable Justice of the Peace who swore he had signed both the Jim Ball and long powers of attorney were mistaken witness, over objection, said in his opinion of the signatures showed one was not genuine and he had so stated. He was still of the same opinion and would have to be assured of difference of conditions so as to make such marked differences not only in execution of the signature as a whole but in the characteristics before he would accept the statement. The papers he admitted did show some. Differences of pen, ink and paper, the position of the hand, all would affect the writing and should be taken into consideration.

Witness said he had been employed by Dr. Stewart and had examined the ratification and its body, but denied he had read consecutively and said he did not know from the paper that Griffith was Ball's agent, and did not consider these things when he testified. He had read the photograph of the long power of attorney he admitted. The paper would speak for itself as to informing him that Griffith as agent for Ball was on one side and Stewart on the other. He judged it was because of litigation he had been examined.

He had received \$25 for examining the papers and was to get an additional fee for testifying.

On re-direct examination witness said a man's age would affect things according to the certainty of his hand, absence of nervousness and eye-sight. The signature on the long power of attorney and ratification was more observant of a line than the will or Richardson deed signatures. The will signature is a very irregular signature,

524      executed under peculiar conditions different from the execution of the other documents. There was no ruled line on the

long power of attorney. It is more observant of a base-line than in other signatures. The pictorial effect and the close examination of characteristics might lead to different conclusions, the will and Richardson signatures are coarse, due to one being on tissue paper and one on blotting paper, but we find the characteristics in both. Variability would not alter or change characteristics which were there, so that even if there were variability in Ball's genuine signature there were present characteristics of his which were absent in the two signatures in dispute. The ratification and long power of attorney signatures were nearer alike than any of the other signatures in comparison with one another. The ratification and long power of attorney signatures are pictorially or in general appearance the best signatures.

PHILLIP F. HAPP, paying teller for about 15 years in the banks of Washington, testified that 80 per cent. of his business was examining signatures in paying checks. The signatures to the will, the Richardson deed and the Mayhew deed he testified were all written by the same person. He refused to pass he said on the long power of attorney but the ratification, he did not think was written by the same person who wrote the other three.

Asked by defendant's counsel what he said concerning these two papers he said he would refuse to pass on the long power of attorney, but should say the ratification was genuine and the same as the signature to the will and the two deeds. The long power of attorney he would not pass on.

525      Asked concerning the signature J. Alfred Ridgely on the short power of attorney, the long power of attorney and the

Jim Ball power of attorney, he said he found the other three signatures of Ridgely were different from that on the long power of attorney.

Thereupon, witness was asked by counsel that supposing the signature to the Mayhew and Richardson deed, the long power of attorney and the Jim Ball power of attorney were placed before him and then the signature to the ratification was put before him, what would be his opinion.

Mr. Merillat objected that the witness had already answered.

Thereupon, the witness replied he should say they were not written by the same person, that he did not think the ratification signature was the same as the will, the Mayhew deed and Jim Ball power of attorney. Whereupon, Mr. Merillat moved to strike out the answer as cross examination and contradicting the direct examination. Over

objection witness said he would refuse to pay out money on the ratification signature if he had the will signature.

Thereupon, he was asked what he would do if he had the signatures of Ball to the Richardson deed and the Mayhew deed and the ratification signature was presented to him witness said he believed he would have to pay them all,—no, he should pay on these two (will & Mayhew deed) and throw this one (referring to the ratification) out.

Witness was further examined in the same line, and as to the Ridgely signatures said he would only honor them if the man himself said they were both his signatures, but he would not if a stranger came in with them, he thought.

526 On cross examination witness said the counsel was asking for the differences as they appeared to him. Conditions and circumstances and other things would cause variations, so that signatures would not look exactly alike, but the characters and appearance would be there and they went by that. Dr. Stewart was a depositor at his bank. He had made only a few minutes' examination of the papers as to which he had testified.

Thereupon, witness was shown the signatures to the bond and renunciation, and asked to state if they were written by the same person who wrote the long power of attorney, the Mayhew deed and the will signature. Witness replied he did not think the signature to the bond was the same as the signature to the renunciation. Asked which of the five were written by different persons, witness said he thought the persons who signed his name to the renunciation wrote the signatures to the will, the Jim Ball power of attorney and the Mayhew deed, but not to the bond. He would expect to find considerable differences after 18 years in signatures. The signatures to the will, the Jim Ball power of attorney and the Mayhew deed were the signatures of an irregular and variable writer. Witness thought there would be more of a change in the signature of a man who wrote often than where a man wrote seldom. Witness said he attached much importance to the variance from a base line. The small letters seemed to run up, but the capital letters were more on a base line, and in that respect there is some difference to which he does not attach much importance. The pen and

527 the attitude all would cause variations. Witness said he found variances in all the signatures. Witness had known people in the bank to differ as to whether or not the same person wrote the signature and it was sometimes a matter of speculation whether they did or not. He had known a man to write with considerable differences even on the same day. The witness having stated previously that he would not consider nor would his testimony be shaken by the testimony of persons of good repute that they had actually seen the persons write the several signatures, how he explained this then, witness said he did not know how he could answer the question, but signatures did vary sometimes. In the bank where persons were well known to them they did accept the words of the persons, even if there was a difference, but they would look to them to right it. The testimony of reputable persons that the same person

wrote the bond who wrote the signature to the will and the Jim Ball power of attorney would not change his opinion that the same person did not. The person who signed the bond signed the ratification and the long power of attorney, *be* thought, but did not sign the renunciation. Asked if he had not again changed his opinion back once more witness said that he had changed, but had changed back again. Since I have had them before me and seen more of them, studied the ratification I changed my opinion and think it was signed by the person who signed the long power of attorney.

DAVID N. CARVALHO, testified that he had been engaged thirty (30) years in the business of examining questioned handwriting, inks and papers.

It had been a life study with him. For twenty-seven years

528 he had been office expert for the District Attorney of New York. He had been employed by a Committee of Congress in the Shaffer and Boaning—Colorado Electric Case, and had studied and passed on eight thousand signatures. He had testified in Twenty-two States in United States and State Criminal and Civil Courts. He had testified in open Court 950 times and had examined cases of disputed handwriting twelve thousand times of all kinds. He had examined the "Ratification," the long power of attorney, the Richardson and Mayhew deeds and what is known as the Jim Ball power of attorney. He said: I find some of the signatures written by the same person and some not.

I have grouped them in two families, the two I have here; one I don't think is written by the same person who wrote the Alfred W. Ball in the other group. The signature Alfred W. Ball appended to the long power of attorney and the ratification are in my opinion not of the same handwriting of the person who wrote the Alfred W. Ball appearing on the others which I have indicated, meaning the Will, the Richardson deed, the Mayhew deed and the Jim Ball Power of attorney. I will take them up separately.

Calling attention to the ratification without any reference at all, or comparison with the other handwriting, and for internal evidence, I find that to be a slowly written carefully studied signature. It is full of rests and stops and it is not the free handwriting of anybody. It is carefully made and, so to speak, the pen had been lifted in many places where it should have gone on, so that in that sense it is a suspicious signature.

529 Before comparing it with any signature which is conceded to be genuine, all that I have said about that signature except in the matter of quantity of rests and stops pertains to the long power of attorney. A comparison of the long power of attorney and ratification leads me to the opinion and conclusion that those two signatures are the work of one and the same person. These two were written by one and the same person, meaning the ratification and long power of attorney.

When compared with the other signatures to which I have called attention, while their general appearance so far as types and forms

of letters is the same, nevertheless in the matter of proportioning, angle and pen pressure they widely differ.

For instance in the Capital "B" in the signature to the long power of attorney and ratification it will be found that the staff of the Capital B where it strikes towards the base line is found to end higher up and much above where the final portion of the B ends. That is consistently the same in those two signatures, while in the conceded signature the first staff of the "B" is found to project further down than does the finishing portion of the "B"—and in that respect is exactly and diametrically opposite the character of the other and showing a difference in proportioning. In the conceded signature the pen pressure begins higher up and ends before reaching the base line, while in the disputed signatures the pen pressure begins lower

530 down and strikes more to the base line and in that respect differentiates. The initial stroke of the small *f* in both of the disputed signatures is a compounded curve while the initial stroke of the small *f* in the genuine signature is a right curve, which indicated an entirely different habit of hand. The disposition of the writer of the standards seems to be to close his small L, the first L of the word Alfred, and make a blind loop or nearly so. And while that is repeated in the long power of attorney it does not obtain in the sense of being a complete loop such as is possessed by the conceded signature.

The handwriting displayed in the conceded signature contains more or less of what I might call palsy, that is to say, seen under a powerful glass, there is a quiver in the line although the hand is traveling continuously and has none of the stops or hesitations to which I have addressed attention in the disputed signature. While there is a similitude in their general aspect, upon analysis they separate. The conceded signature just referred to is the Jim Ball power of attorney.

Speaking of the Jim Ball power of attorney, I called attention to the same types and forms but I should exclude one letter. I notice that an attempt has been made in the ratification exhibit in the making of the word "Alfred" to make the Greek E, while in the conceded writings it is a reduced L. And among the genuine signatures or standards so called I found no illustration of that Greek E in the word "Alfred." I do find it, however, written in the word Alfred on the same page by whomever wrote the body of that instrument.

531 That person uses the Greek E in writing the word Alfred and that type of E has been incorporated in the signature Alfred W. Ball at the foot of the page. Now, that Greek E does not appear in the signature to the will or the Richardson deed. In the Richardson deed there is none at all or the Mayhew deed. In the Mayhew deed it is a reduced L so that all in all I am of opinion that the person who wrote the so called standards is not the writer of the two I have designated as disputed. I have examined the signature J. Alfred Ridgely, J. P. to the agreement page 2, to the short power of attorney, to the Jim Ball power of attorney, and to the long power of attorney. On the long power of attorney I recognize in the signature J. Alfred Ridgely, J. P. the hand of the same person who wrote



the signature Alfred W. Ball appended to these (meaning the long power of attorney and ratification). The pen pressure, the relationship to a base line, the peculiar accentuations and pictorial or altogether effect are respectively the same and in my opinion the writer of one of those signatures is the writer of the other. I am of the opinion that the person who signed the name J. Alfred Ridgely to the Long power of attorney is not the hand that wrote the J. Alfred Ridgely J. P. attached to the Jim Ball Power of attorney, the agreement page 2, and the short power of attorney.

All of them were written by the same hand except in my opinion the J. Alfred Ridgely attached to the long power of attorney. My reasons briefly, are as follows: I find a freedom of hand, a signature or signatures full of idiosyncrasies, natural, undistributed, so to speak, and the writing free hand, in the larger number, excluding the long power of attorney, while the long power of attorney is a different character of handwriting altogether. It does not belong  
532 either to the same standard of penmanship in its makeup, nor was it made by a person holding the pen in the manner of the genuine signatures, and it typifies the characteristics that I find in those two signatures that I have designated as disputed. The signature Alfred W. Ball to the long power of attorney was not written by Alfred W. Ball if the will signature was.

The signature to the Ratification was not written by the Alfred W. Ball who wrote the will signature, if it was written by him. He placed the signatures to the long power of attorney and ratification in one group or family and the Richardson deed, the Mayhew deed and the Jim Ball power of attorney in another group, and also the will. The long power of attorney and ratification signatures he said in his opinion are not of the same handwriting as the person who wrote the other signatures. Calling attention to the ratification signature by itself without reference to the other signatures the ratification was a slowly written, carefully studied, set signature full of rests and stops, and was not the free handwriting of anybody. It was carefully made and the pen lifted in many places and so it was a suspicious signature. He was of the opinion the same person wrote the long power of attorney and the ratification. While their general appearance so far as types and forms of letters was the same, in the matter of proportioning, exact angle and pen pressure, they widely differed from the others. The witness called attention to differences  
533 in the pen pressure he had observed in individual letters, saying that the Capital B was consistently the same in the Ratification and long power of attorney signatures but different in the conceded. Witness said the handwriting in the conceded signature under the lens showed more or less of what he would call palsy or quivering although the hand is travelling continuously and shows none of the stops as in the disputed signatures. Further, he had noted in the ratification that an attempt was made to make a Greek "E" in the word Alfred, while in the conceded writings it was a reduced "L," and he had seen no illustration of the Greek "E" in the standards, but he did find one such "E" in the body of the ratification, and that had been incorporated in the signature at the

foot, so that all in all he was of opinion the person who wrote the standards did not write the disputed signatures. The will signature was written as though the person were anxious to get off this flimsy paper.

Shown the signatures J. Alfred Ridgely, on the long power of attorney witness said he recognized in that signature the signature of the same person that wrote Alfred W. Ball on the disputed signatures. The pen pressure, the relations to a base line, the peculiar accentuations and the pictorial effect were the same in the power of attorney signature of Ridgely as in the signature of Ball to the long power of attorney and the ratification. The person who wrote the Ridgely signature on the long power of attorney did not write the Ridgely signature to the Jim Ball power of attorney, or the short power of attorney. They were not written by the same person. His

reason for that was largely freedom of hand in the latter upon  
534 which the Ridgely signature was natural undisturbed & full of idiosyncrasies. In its standard of penmanship and its manner of holding the pen the Ridgely signature on the long Power of attorney was not the same as in the other Ridgely signatures, but typified the characteristics in the disputed signatures of Ball. If the will signature were genuine Ball did not write the ratification.

On cross examination witness said he assumed from examination and was told by Dr. Stewart that signatures he had designated as the disputed signatures were questioned; they were unnaturally written & not by the same person and Dr. Stewart had told him he thought the will signature, the Richardson deed signatures would be conceded as Ball's signatures. He had not seen the Jim Ball signature until this morning and then had told the person showing him it that he thought that was genuine and would accept it as such. Witness admitted that in his direct examination he had referred to the four signatures as the conceded ones.

The same person wrote Alfred W. Ball on the long power of attorney as wrote J. Alfred Ridgely and I believe the same person who wrote Alfred W. Ball on the long power of attorney wrote Alfred W. Ball on the ratification. Asked if the person who wrote the body of the ratification wrote the signature Alfred W. Ball, he said he would not say. Asked if he had not said he found the same Greek letter "E" in the body and in the signature the witness replied that all he had said was he found the same Greek "E." He would not form an opinion simply on Greek E, but had called attention because of finding that peculiarity in the word "Ball" on the

535 same piece of paper. He had not gone into questions to the body of the ratification and the signature, but he did find the compound curve in the small f of Alfred, he would tell counsel, which was most peculiar. It is found in the word Alfred in the body of the instrument, and there were other peculiar things pointing in that direction, but he would not undertake to say without considerable examination or formulate a definite opinion. He had, however, formed a definite opinion with nothing but the Ball and Ridgely signatures before him that the signature on the Ball power

of attorney of J. Alfred Ridgely and Alfred W. Ball were written by the same person because they stared you in the face. He had not formed any opinion as to whether the same person also wrote the interlineations. Asked if it was not his habit where papers were submitted to him to study the whole handwriting, witness said he did not think the photograph gave him but a part of it, but it being shown to him said it was true that all was produced except A. W. at the top and the figures 240 and that in the photograph he had everything except the letters "A. W." at the top and the figures 240. Witness as to his inability to say whether the person who wrote Alfred W. Ball and Ridgely wrote the body said he was unable to do so for lack of study. He said he knew before he testified that the ratification signature was a disputed one, or that he believed it whether he knew it or not. Witness said that he thought he saw in New York the originals of the papers, except the will and the Jim Ball power of attorney, but later said he could not be sure.

536 Asked whether the conceded signatures exhibited a fixed or variable signature witness said: "I think he is a very erratic writer. Unusually so. He writes an illiterate, outrageous signature, if you will allow me to characterize it."

Q. And in such a man you would expect to find considerable variations in all his signatures would you not? A. Yes, the peculiarity of his handwriting is his tremendous variations of hand, and his departures so to speak from the standards of penmanship.

Asked then if he would not have more than usual difficulty by reason of these in forming definite and fixed opinions he said it worked the other way, that Ball had a standard of penmanship, and at the best could write only up so high and when he found signatures written ever so much better than Ball could write it told the story itself.

Asked if leaving out alignment he did not regard the signature to the will as a very good signature for an illiterate man witness answered that the habits of a man when writing with good pen and ink and good paper and without effort was one thing but the will signature was written on flimsy paper and the writing had been exceedingly careful. He had drawn it and was not writing his natural signature. He said the will was a remarkably fine specimen of Ball's handwriting. It was a very slowly written signature and had to be. It was written much slower than his average signature.

All signatures on the will, ratification, Jim Ball and Long power of attorney exhibited considerable disregard of a base line  
537 and particularly that of Ridgely who always writes with a correct alignment. He said that differences in rest, position and circumstances would make variations in signatures. The signature written 18 years before followed the line, but it was because there was a line for him. The reason the conceded signatures of later years did not follow a line might be because he did not see it.

Asked regarding the signatures to the bond and renunciation witness said he would classify them with the standards and separate them from the disputed signatures; that the habits of hand, like the long staff of the B, obtains very pretily in them. I should call

them genuine signatures. He had only examined the bond and renunciation this morning and said he had much more opportunity to examine the body of the ratification which he was unwilling to pass judgment on. His attention had been directed to signatures. He knew the body of the ratification was in the free handwriting of somebody; there is no disguise or simulation in it. It is the genuine handwriting of someone and he has nothing to do with it.

Questioned whether self-consciousness would cause variations in signatures and a good deal would depend on how far a man studied his signature as he wrote he said it will. There was no doubt of that. He could not agree with counsel in taking the testimony of witnesses over that of handwriting experts, because he knew there was something in handwriting, if not you might as well open your jails; and he had known as many as ten men say they saw a man sign his name. They thought it was the real man doing it.

538 Asked to examine the letter "L" in Alfred with the two "L's" in Ball in the Mayhew deed witness admitted that in that one signature they exhibited wholly different styles as to proportion and slant, one case leaning over on the next letter and in the other case standing up straight. He claimed you did not find it in the disputed signatures and said he did not pay special attention to these little tricks of the hand as some one might hit his elbow. He did not think the ratification and long power of attorney signatures were very good forgeries.

Asked to examine all papers closely and say if he would not find what a Treasury expert had pointed as a distinguished peculiarity so simple and yet present in every one of them that nobody but a trained expert forger would notice—and being pointed out the fact that in every "W" there was a very slight characteristic stop or emphasis marked on the end witness asked what mark was meant, and being shown said he was glad counsel had spoken of it because he had left it out. There was a small club mark at the end of the "W's," but in the disputed signatures they do not he said travel down again and parallel the up stroke but strike off to the right, while in all the conceded ones they strike down.

Thereupon, he was asked to examine the renunciation and see if he had not made a mistake and if the erraticism had not worked in that case. Witness said counsel was right; there is a puncture but the W had been made twice. Asked if he would expect a busy country doctor to observe a small peculiarity like that he said he would not. He was testifying only to a matter of opinion;  
539 he did not say that a person wrote it or did not write it, when asked as to the effect of other testimony upon his opinion.

Asked if as to the ratification it would shake his opinion to know the money had been put to Ball's credit and that this had been verified by the bank books, that a bank book had been made out in Ball's name and the money had remained to Ball's credit for five months and until after his death witness said he made no pretensions to infallibility, that he had given his best judgment about that signature & his reasons, and that he was a human being liable to err like all

others, but still witnesses could be mistaken. Experts too he said could be honestly mistaken. He fixed his opinion solely by comparisons of handwriting and if these other things would change his opinion what was the good of the comparisons. Asked if it would not alter his opinion to learn that other experts had testified that the person who wrote Ridgely on the Jim Ball power of attorney had not written it on the contract of sale and the short power of attorney he spoke of one time having 17 experts against him. Witness said he did not think it was fair to take the will signature for evidence as to the number of stops because it was written on flimsy paper and very lightly to avoid tearing the paper. Witness said by characteristics he meant the peculiarities and departures from ideals in penmanship. He found 27 stops in the ratification signature. Witness said it would confirm his opinion of Ball's handwriting to learn Ball seldom wrote anything, but he thought if a man used  
 540 a hoe all the time it would tend to make him write formally instead of irregularly, and he would write a stiff angular hand and possess less of what we might call characteristics because there is no assortment.

On re-direct examination witness said that the signature of Ball to the long power of attorney had no ruled lines on it. It did not hit a straight edge. Ball's irregularities were more exaggerated. Witness thought the best signature of Ball's was that to the ratification.

On re-cross examination witness said the signature to the bond was a fairly good signature. The "W. Ball" part was good. It was a very great improvement over the "Alfred," very much better than that.

Asked if this did not confirm the erraticism of the writer in having a very great improvement in the same signature witness said it did. It would be the natural tendency of a man to follow the line if he could see it.

GEORGE W. WATERS, JR., cashier of the Citizens National Bank of Laurel, Maryland testified that the bank until recently was the only national bank in Prince George's County, was a depository of county funds and was patronized by many people living in Marlboro. Dr. L. A. Griffith had been a depositor since the bank was started in 1890. The witness produced a letter to himself and it was offered in evidence as follows:

UPPER MARLBORO, MARYLAND, June 6, 1903.

MY DEAR SIR: I send one check for \$79.39, one check for \$500. Total \$579.39. You will please place to my credit. I do

541 not know the cashier of Columbia Bank but suppose this is all right. Please have collected at once.

Very truly,

L. A. GRIFFITH.

Witness identified the check of Dr. Stewart's, dated June 5th, 1903, for \$500 as the check referred to and said it was placed to the credit of L. A. Griffith. Witness said the bank sent the check on to Washington and did not notify Dr. Griffith, until it received the following letter from him dated June 17th, 1903.

UPPER MARLBORO, MARYLAND, *June 17th, 1903.*

DEAR MR. WATERS: If the check sent you for \$500 has been paid, please enter the enclosed check of \$300 to the credit of Alfred W. Ball and send me a book for him with this entered. He will have more to deposit a little later. He will or I will send you his signature.

Yours truly,

L. A. GRIFFITH.

June 8th or 9th The Traders bank notified witness' Bank the check had been honored. He did not notify Griffith of its payment until he received a letter from him on June 17th. On June 18th he received a letter from Dr. Griffith dated June 17th and same is above set out.

Witness said an account with Alfred W. Ball was opened on  
542 June 18, 1903, for three hundred dollars, a check having been received from Griffith for the purpose and Dr. Griffith's check for three hundred dollars endorsed "for deposit to the credit of Alfred W. Ball," L. A. Griffith.

The account of Alfred W. Ball was put in evidence as was also a bank book made out in the name of Alfred W. Ball with an entry therein of three hundred dollars.

Witness produced the bank book showing bank entries corresponding to the foregoing strictly including the account of Alfred W. Ball, opened June 18, 1903, for three hundred dollars, which remained to Ball's credit until December 5, 1903, when it was drawn out by a check of L. A. Griffith Executor. There was also put in evidence a letter from the bank to the Traders Bank at Washington, forwarding the Stewart check for collection. There was also put in evidence a check signed by Dr. Griffith as executor of Alfred W. Ball December 3rd, and endorsed to the credit of L. A. Griffith Executor of Alfred W. Ball for three hundred dollars. Witness stated that against this deposit of three hundred dollars to Dr. Griffith's credit as executor, checks were drawn as follows:

December 24, 1903, to Scott Armstrong for \$110, Armstrong being stated to be an undertaker; to Jacob Hawkins \$2.50; Jno. Hawkins \$5.50; Ed Tolson Fifty cents; to the New Era \$5.00.

Witness said that on other and previous occasions Dr. Griffith had sent money to the bank and had bank accounts opened up in the name of other individuals just as was done in the Ball case.

Witness over objection of defendants who said Dr. Griffith's  
543 reputation for veracity was not in issue, testified that Dr.

Griffith's reputation for truth, veracity and honesty was very high and good. Witness testified his bank did business with farmers quite largely and others who seldom wrote and said he found the signatures of such persons, especially farmers, was very irregular and not uniform. Witness said his business for ten years had been that of comparison of signatures and observation of handwriting and testified that in his opinion the signatures J. Alfred Ridgley J. P. on the several papers were all pritten by the same person and that in his opinion the person who wrote J. Alfred Ridgley did not write Alfred W. Ball. There was a little irregularity but nothing such as



would cause him to question any one who said they were the same signatures.

Witness examined the signatures of Alfred W. Ball to the long power of attorney, the Jim Ball power of attorney, the will and the ratification and said in his opinion they were all written by the same person and that the same person also wrote the signature to the renunciation and the bond. He had paid very close attention to and taken an interest in signatures for the last dozen years. He saw nothing about the signatures that would cause him to question statements of witness of good reputation saying they had seen Alfred Ball sign the long power of attorney and ratification.

Witness said he would consider circumstances and conditions in deciding questions as to handwriting and that sometimes in his experience they had found it necessary to make inquiries before  
544 acting upon signatures that had dissimilarities.

Witness from his familiarity with Dr. Griffith's handwriting would say that in his judgment Dr. Griffith did not write Alfred W. Ball.

On cross examination witness said he observed that the check of December 3rd, 1903 was torn out one corner. He said Dr. Griffith usually wrote on his own checks deposit to the credit of L. A. Griffith. But on this check the endorsement was to his credit as executor of Alfred W. Ball. Witness said that Dr. Griffith had had an executor and an administrator account before and that the three hundred dollars of Ball's account was used to open up an account in the name of L. A. Griffith Executor.

Witness said that he had had only about ten minutes for examination of the signature before he took the stand. He said he had discovered that the signature of Ridgely to the long power of attorney seemed a little cramped, but he would say it was all the same signature and they all resembled each other. He found no irregularities in the Ridgely signature to the contract, short power of attorney and Jim Ball power of attorney. They seemed to be pretty near the same thing. They did not exhibit as much evidence of a cramped hand as the long power of attorney. Differences of pen and other things would make some difference. As to the Ball signature he said he found the same difference but, nevertheless, thought them all written by the same person, it is all pretty near the same handwriting.

On re-direct examination he said he based his opinion upon examination as a whole of all the signature.

545 W. HOWARD GIBSON, paying teller in the U. S. Treasurer's office for twenty years and now assistant cashier, said his duties were largely to examine and see if papers are signed correctly and that the signatures are genuine, and had been for twenty years. It had been necessary for him to study handwriting as a part of his duties and he had been a witness in a will case which he could not recall, and in a pension forgery case. He said the difference in pen, ink, position, circumstances, light and health, all affected signatures. He had very often known the signatures to be genuine and yet differ a good deal from another he had seen the

day before, but some instinct would teach him to know the difference and to be able to pass on the matter. For instance—the signature of *Sergeant* Gen. Smart, who disbursed a great deal of money, varied a good deal from day to day but they knew them.

Witness examined the signatures to the powers of attorney, the will and the deeds and said that in his opinion they were all written by the same hand. There was something uniform about them all and yet there were little variations. There were a good deal of uniformity.

Asked if he examined all the papers in the case, including the bond and the renunciation, witness asked the dates of the signatures and after having them told him, said they were all written by the same person. He had based his opinion upon the general similarity of the formation of letters and one peculiarity in the formation of the letter W that was uniform in all of them. This was in the finish of the letter "W" in which there was a rest at the finish at  
546 the upper stroke. It was not very pronounced but under the glass it showed.

He regarded that as very important because a person who would or might endeavor to imitate a signature, if it were attempted, would probably have this escape his scrutiny and could not accomplish it in any ordinary writing unless it became natural to him. He thought, over objection, it would escape the attention of any but an expert counterfeiter. It would depend on the training or study whether anyone but an expert forger would notice this finish, it would depend on his training & study. A haphazard man in the country would not but some doctors have different training from others.

Witness said he attached a great deal of importance to statements of reputable persons as to signatures and frequently we have to have the confirmation of reputable persons who know to straighten things. He would attach a good deal of importance to the statements of a reputable justice of the peace that he had seen Alfred W. Ball sign the long power of attorney and the ratification, "we do here in the city and in business." He saw no reason from the appearance of the signatures to discredit the certificate of the notary. It was evident from observation of the signatures alone that conditions under which they were written were different that there is a difference in the angle, and there was also apparently a difference in the nervous condition of the writers: He could not see that age had much to do with it. He saw nothing in common between the body of the ratification and the signature to it—the form  
547 of the letters—and they were written by different persons

he thought. The person who wrote J. Alfred Ridgley on the long power of attorney did not write the signature Alfred W. Ball thereon or on the ratification. The handwriting was different, there was a considerable difference between them but it would be difficult to define it; there is a little difference but difficult to define. All the signatures J. Alfred Ridgley J. P. in his opinion were written evidently with different pens and ink and there was some difference in the quality of paper and there was something in the handwriting

but they were all written by the same person. As to his own handwriting he found that difference in position and angle at which you wrote caused writing to differ and yet there would be a general resemblance and he could tell it because he wrote it both ways.

On cross examination witness said he assuredly attached importance to the examination of signatures by handwriting experts, and asked what could we do if we could not depend on experts for opinion. He had examined the various signatures for a short time more than three weeks ago. He had then examined the long power of attorney, the ratification, the will and he thought but was not sure the bond and renunciation. He reached the conclusion he had here expressed that same afternoon. It was possible to forge signatures and he had seen some clever forgeries and of course if any signature could be forged that could be. But unless the man were an expert  
548      counterfeiter he would not observe the little rest on the end of the "W," but admitted it was possible it could be forged by an expert. But unless an expert he would not have observed the little rest on the end of the "W."

Witness said he regarded the will signature the best of all the signatures, leaving out the renunciation and bond. The alignment was rather erratic in the will, more so than in the long power of attorney but he thought it was the best one. Witness was examined at length regarding differences and said the long power of attorney was unquestionably the straightest; that they bore no radical differences: it was very slight: there is a difference in the B's: there are many similarities. The rest he has spoken of was one that was unusual and not naturally made. There was a little difference in the rest on the W in the long power of attorney. It was more pronounced in some than in others. It was perfectly plain in the Richardson deed. He said he did not think forged signatures would deceive the trained eye. He never saw a very good counterfeit signature. He had had signatures brought to him that other persons thought were genuine but persons accustomed to handling money would see at a glance they were counterfeit. On further cross examination as to why he thought an expert would discover the rest on the "W" and a non-expert would not, he said, because it was the person's business but we have found there were points which the expert forger even would not get and thereby their work would be detected. Witness in the course of his duties had seen and known, he had been aware of them but would not say he had discovered forgeries before, and if a check was to Thomas Jefferson Jones and  
549      some person who was not Jones would write that name on the back of it he would consider that a forgery.

On re-direct examination witness said when he originally examined the papers he was given and took as much time as he thought necessary to reach a conclusion. He had not been told anything before giving his opinion. The rest referred to he had detected himself and called to counsel's attention. He saw no more difference than one usually would find in handwriting and thought the fact a man wrote rarely would account for some difference in alignment.

In the will it was necessary to use more care than usual because of the thin paper used.

WILLEY O. ISON testified that he was a clerk in the Treasury Department and there was referred to him drafts which came to his bureau in the Treasury Department in which there was any doubt regarding signatures. For a year past he had charge of this work. He would attach a great deal of importance to the statements of reputable men who had signed and seen signatures and he had observed a number of differences in the signatures of himself and exhibited a number of checks to illustrate. Asked if difference and circumstances and temperaments would affect signatures he said decidedly, and knew that such a thing as absence of his glasses would affect his own handwriting and likewise would nervousness. He had once been sick for three weeks and then after being out four weeks it was with difficulty he could write at all. Witness had been permitted to form his own conclusions and had so stipulated before examining the signatures. When he saw the long power of attorney, and the will in Marlboro, he asked to see more signatures because in the case of a man's handwriting, that was uncertain and variable the more signatures the better in deciding as to genuineness as to one in dispute. Asked if the signatures were not written by the same person, witness replied, they might be. I would take the word of the man whoever the man was who said he wrote it: I would say he did: there are some differences, and some resemblances. Do you wish me to point out the resemblance and difference? Oh yes, he found such difference sometimes in handwriting. In answer whether they might have been written by the same hand he pointed out at some length various difference- that he had noted and said that on all of the different papers there was a good deal of discrepancy in some and in points of resemblance, first in one and then in the other, and between two and two, that you do not find in others. If a reputable Justice of the Peace said he had seen Alfred W. Ball write the signature to the long power of attorney and witness had the other signatures before him, witness said he would accept his statement. If two persons of good repute said that they had seen Alfred Ball sign he would take their word and would consider he would have to, and the same could be said of the ratification. He would accept the word of the person who said he had seen Alfred Ball sign the long power of attorney and will and the ratification. Witness said that if the signatures came before him as original papers he would not pay out on them and would not accept the attorney signature as having been written by the same person without verification.

551 Asked to examine the signatures of Alfred W. Ball to the Jim Ball power of attorney and will and the Mayhew deed to the Richardson deed he said there were plenty of marks of dissimilarity between them, the signature was not a regular signature and asked if that fact made more difficult the formation of an opinion with certainty witness said it made it more difficult. From an ex-

amination solely of the handwriting in the signatures written on the six papers, there were many differences. Asked if they were marked, he said, oh yes. They differed in many ways in details there was no uniformity as to the lines but there was not much variation as to slant. Where all the signatures were so different he did not like to give any off hand opinion. He would want to know which papers he could take to assume to be genuine before he would like to pass on them. It was his custom where claimants against the government were concerned to write and ask them about such matters. Asked if the same person wrote the Jim Ball power of Attorney who wrote the will signature he said it might have been so but he would not like to say, it being stated to witness, the Jim Ball power of attorney signature and the will signature were conceded. Witness said there were differences between those and he described with much detail these differences. Witness said he thought the fact the man was a farmer and wrote rarely would have a very great effect in accounting for these differences and he would not as a rule expect uniformity in such a man's signature. Witness would attach importance to the fact that the man supposed to sign had made statement consistent  
552 with it. These would all help him in forming his opinion.

On cross examination witness said he was not the ultimate authority in the matter of signatures coming to him, in his office and where, if he was in doubt, although he thought his opinion as good as his chief he passed the doubtful cases to the chief so he would take the responsibility. Witness said that many times signatures came to him that bore no resemblance at all to the original they had on file as the man may tell his son or daughter to sign his name. He had discovered simulated signatures but not very often. He could recall only two instances out of the many he examined where he was satisfied they were simulated. One was that of Josiah Jump. Two of the experts thought Jump had signed it and witness thought not. Jump satisfied them by saying he had told his son to endorse the warrant for him. There was a marked similarity, it was simulated and he admitted it, but no attempt at real forgery or criminality was intimated. Witness would sooner his chief take the responsibility of the bad endorsement than himself; witness said he signed the affidavit of March 30th 1906 with his name signed to it.

Witness on re-direct examination said he had had a case where they had disputed the signature of a government special agent and the agent replied to them that he did not have a uniform signature and by forwarding a few of his signatures in all of which he could point out difference and agreements so that he was very largely guided by the persons statements who had seen the signatures written.

On re-cross examination witness said of course it would  
553 affect his opinion if the man making the statement was telling the truth but if he lied he would disregard his statement.

JOHN T. FISHER, age 50, deputy clerk of Internal Revenue of the District of Columbia, a life long residence of Prince Geo's County, sheriff, clerk to the county commissioner, and examiner of accounts of the Court of Prince Geo's County, testified that Dr. Griffith had been judge of the Orphans' Court, supervisor of elections and health officer and was well known in the community. He knew the reputation of Dr. Griffith in the community for truth, veracity and honesty. The defendants objected there was no foundation laid, that Dr. Griffith's character was not in issue as to veracity or as to his honesty. The witness responded that Dr. Griffith's reputation was excellent and as good as anybody's in any community he ever was in.

Witness also knew Justice of the Peace Ridgely and others who knew him and testified that Ridgely's reputation for truth, veracity and honesty in the community was good.

On cross examination witness said he could not say he ever had heard Griffith's reputation discussed and never had heard it said Dr. Griffith would stoop to anything to accomplish his purpose, adding he had known Griffith 27 years.

On re-direct examination he said he was astonished to hear Griffith's reputation discussed in these proceedings and never had heard it questioned before this suit.

C. W. CLAGETT, age 36, lawyer living in Washington and a resident of Marlboro until 21 years old, since which time he had  
554 been practicing in Washington and also in Prince George's County, said that until two years ago he lived near Marlboro and always spent a considerable part of every summer in Prince George's County, and visited the neighborhood once or twice a week. Testified that he had known Dr. Griffith for 25 years. Griffith had been their family physician and had a large practice in the community. Witness knew people who knew Griffith a great deal better than he knew the people in Washington with whom he had been associated with in the past thirteen years.

Dr. Griffith's reputation for truth, veracity, under objection, and honesty and uprightness had never been questioned and witness said he had had an opportunity of knowing if it were questioned. Dr. Griffith always bore a very high character in the community, had been a witness on several occasions at Marlboro and no one ever had undertaken to attack his reputation.

Six or seven years ago Dr. Griffith became the leader of an independent faction of the democratic party and a considerable hard feeling arose between the two factions but during that time witness never had heard anyone question his reputation for truth, veracity and honesty. The fact is, he said, Griffith was opposed to the faction with which witness' family was connected and of which State Senator W. B. Clagett was the leader. Personally witness had had considerable hard feeling against the Doctor, and had not yet entirely gotten over that feeling but he did not think Dr. Griffith's reputation for truth, veracity and honesty had ever been questioned.



555 On cross examination witness went into details of the extent to which he mingled with the people in and about Marlboro and said the political fight brought on an estrangement between Dr. Griffith and the Clagett faction. Asked if the political controversy stopped their intimacy, witness replied counsel would know better if they had ever been in a political controversy than to ask the question. The Clagett- had controlled the democratic party in the county for very many years and an attack made by Dr. Griffith when he aspired to be the party leader had made things very warm. Witness never had heard any one say Dr. Griffith would say or stoop to anything to accomplish his purpose and could not recall ever having heard it said of Dr. Griffith. The only way that any feeling against Griffith ever had arisen had grown out of this political controversy.

C. A. M. WELLS, age 32, attorney at law living at Hyattsville in Prince George's County, Md. and practicing in Marlboro testified he had been living in the county all his life and for ten years past had known pretty nearly everybody and he knew, under objection, Griffith. Griffith was a prominent man in the community, his reputation for truth, veracity and honesty never had been questioned and Dr. Griffith had been called on by witness during trials to testify as to other people's reputation.

C. A. WELLS, age 65, consulting physician and president of the first National Bank of Southern Maryland at Marlboro and director of the Hyattsville National Bank had known Dr. Griffith 25 years and knew pretty much everybody in the community. Griffith 556 was a well known man with a very large practice and witness had heard him talked about probably a thousand times but never had heard his reputation for truth, veracity and honesty questioned.

On cross examination witness said he had known Dr. Griffith intimately for ten years; that witness was president of the Maryland Medical Association and had helped to elect Dr. Griffith as member of the medical and surgical faculty of Baltimore City and as one of the examining board of physicians of the city of *Maryland*.

BUCHANAN BEALE, age 59, deputy U. S. Marshal of the Supreme Court of the District of Columbia had lived in Prince George's County near Marlboro in 1890 and '91 and married a lady from the neighborhood and visited there from six to eight times a year for a few days at a time ever since. He had known Dr. Griffith 25 years and knew the leading families in and about Marlboro though witness did not circulate about much. Griffith had been his family physician for years. Witness had heard people speak of Dr. Griffith but never had heard his honesty & integrity questioned or discussed. He had heard him spoken of in politics as a man of hot temper but not his reputation for truth or honesty.

On cross examination witness said his trips to Prince Geo. County usually in the past ten years were for hunting or fishing and would

only see people who would come to the club who live in the country but he sometimes was in Marlboro to file a paper and visit his daughter's family; for 2 years lived about a mile and a half from there. Except the people who accompanied him he would  
557 only see on an average of two or three people.

C. W. DARR now a resident of Washington but a resident of Laurel Prince George County from 1895 to 1902, and a member of the bar of the county had known Dr. Griffith ever since witness' introduction in the county politics in 1896. Witness knew many people in the community who knew Griffith. He had heard his reputation for truth, veracity and honesty discussed and all of the discussion had been good. Dr. Griffith stood at the head of his profession in the county, and he did not regard him as a "mere country doctor."

On cross examination witness said Dr. Griffith was a prominent man and a strong man in his party, had the confidence of the people and was one of the political leaders but was not a dominating force.

RICHARD N. RYAN, 41, a resident of Marlboro for about ten years until he moved from that neighborhood some three weeks ago, testified that he had been register of wills, also treasurer of the county. Witness lived in the village of Marlboro where Dr. Griffith lived. Witness was a republican and Griffith a democrat. Witness never had heard of his being in trouble in any way, his reputation was good and he stood very high in the community.

Witness also knew Justice of the Peace Ridgely and others who knew him, had known Ridgely 25 years and his reputation for truth, veracity and honesty was very good.

JNO. T. BALL, age 65, and first cousin to Alfred Ball, testified that Alfred Ball told him Dr. Griffith had sold his place  
558 for him at \$40.00 an acre, that it amounted to over ten thousand dollars and that he got five hundred dollars on it. Alfred had told him this on a Sunday before Jim Ball died when witness was at the house to see Jim. Jim was sick in bed at the time and could not see any one.

On cross examination witness said he thought that it was in the month of June and Jim Ball died the following Monday or Tuesday. Witness had been at the house about four months before and usually went there four or five times a year for the last 15 years or more. Witness lived about two miles away. He got there a little before dinner at 12 o'clock, driving, and remained at the Ball house three or four hours. Alfred had shown him around the place a little and had talked with him about cleaning up, cutting the bushes away to keep the fire away. About Jim, he told him he could look in at the door but not say anything to Jim.

JNO. P. HAWKINS, colored, age 45, testified he lived near Centerville a short distance from Ball's, that he worked at little odd jobs of farm work. Knew Alfred Ball pretty well and often did little odd jobs for him about the place; he also knew Jim. During the fall

after Jim Ball died Alfred told witness about selling the place. Alfred said Dr. Griffith was the salesman for the place for him and that he had sold to a gentleman named Dr. Stewart and he had paid him five hundred dollars on the place and he had told him the price that he got for the place. I think he got forty dollars an acre for it, and he had paid him five hundred dollars on the place. Witness thought Alfred said he got \$40.00 an acre for it. Alfred said 559 Dr. Griffith had put the money in bank for him.

Asked if Alfred said anything further, witness said Alfred said he was expecting later for the balance to be paid and as near as witness remembered he said it was in November, the balance was to be paid. Asked if Alfred said what he had done with the money, witness said Alfred had told him Dr. Griffith had put it in bank for him. Alfred said he was getting ready to go away from the place after the time had expired for the balance to be paid and had told witness where he expected to go but witness had forgotten that.

Witness had had more than one conversation about the sale with Ball, as witness went there pretty often. He and his wife used to do a little cooking for Alfred and carried it back and forth and Alfred talked about the sale pretty much every time witness went there.

On cross examination witness said Alfred had spoken to him about the sale of the premises. He had spoken to witness probably a dozen times. He did not reckon he knew when, what time, he told him, sometime during the year after the business was transacted and witness repeated what Alfred had said to him. He said Alfred had told him the place was sold and Dr. Griffith sold it to a gentleman Dr. Stewart, that the rest of the money would be paid at such a time and named the time to witness but witness could not remember the date and day but thought he remembered the month. Asked if Alfred said Stewart had paid him Alfred the money, witness replied no, he had said that he paid the money to Dr. Griffith; he did not tell him that before Jim Ball died.

560 Alfred had spoken something to witness about it before Jim Ball died. Jim died either in June or July about three years ago and most of Alfred's talk had been since then. Witness lived close enough to Alfred to stand in one door and talk across to the other door. Witness again stated what Alfred Ball had told him but could not give his language and said he did not undertake to give the words but substance he had had with Alfred Ball. Ball had not said he had a contract for the sale of the property and had not said anything to witness about the oil company. Alfred had only mentioned one man. He knew there were men down there digging for oil about the time he told him this.

Witness said Dr. Griffith had sent word to him he wanted to see him when he came to Marlboro and when he went to town. Dr. Griffith asked if he had ever had any conversation with Ball, he had told Dr. Griffith what he had said on the stand and another man named William Smith who worked for Enos Pumphry had told him, witness, Griffith wanted to see him. Witness had not seen Dr. Griffith to talk to from that day until today. He came today because Scott Armstrong the undertaker told him Dr. Griffith wanted

him to come. He supposed Dr. Griffith sent for him because the doctor knew witness worked there for Mr. Ball a good deal; that he was there when both Balls died, and had dug their graves. Vincent Richardson was about the place helping around just as witness was: that he told Dr. Griffith what Ball said to him but did not remember whether he so told him before Griffith told witness he wanted him to testify: that he never told anyone else what he told Griffith.

561 HENRY PAYNE, age 49, trucker and jobber at carpentering, testified he had lived right near Jim Ball at Camp Springs at Red's Corner and often visited Jim Ball after Jim Ball moved to Allie Ball's. After Jim was sick, witness visited him regularly once a week. Shortly before Jim died and also after Jim's death Alfred Ball told witness Dr. Griffith had sold his place to a man named Stewart; he thought Alfred had said that he was president or something about the oil tank over on Bruininger's place; that is the name of the man who first owned it; who they got it from, I don't know. Alfred said he had sold to this man Stewart and had gotten five hundred dollars on the place and that Dr. Griffith had put this money in the bank and that he was to make another payment on it but witness did — know how much. The other payment was to be made in November; that he had sold it at \$40 an acre. Alfred had talked with witness about intending to build a house down on this little piece of land he was going to keep there; that he was going to keep for himself. This had been Jim's place. It was about three weeks before Allie Ball died the conversation about building took place. Alfred said when Stewart made the next payment on the place he, Alfred, would come down there and get witness to build a house on the little piece of land he was going to keep and that he was going to sell the balance off. He would keep a little place and live on it and wanted to be close to witness so if he got sick witness could wait on him and Alfred said that after his death the little place would be witness'; Jim Ball during his lifetime told witness he had put all of the business in Dr. Griffith's hands for to  
562 sell this place and Dr. Griffith had sold it and that "they" had given Dr. Griffith the money to put in Laurel Bank.

On cross examination witness was asked how much money Ball said had been put in the Laurel Bank & replied five hundred dollars was what he told him.

Q. That he had given Dr. Griffith five hundred dollars to put in the Laurel Bank? A. Five hundred dollars that Stewart had paid on the place and that Dr. Griffith had taken it and put it in the bank.

Q. Did he say he gave it to him to put in the bank? A. He said he told him to put it in the bank.

Q. Five hundred dollars? A. Yes sir.

Witness said Jim Ball told him that was not more than a week before Jim died but it may have been. Alfred Ball first spoke of the sale to witness a few days after Jim's death, Alfred told him of it. Alfred had told him five hundred dollars had been deposited in the

Laurel bank by Dr. Griffith. Alfred spoke to him at Alfred's house. He was in the habit of visiting Allie Ball after Jim died. He remembered twice Alfred had spoken to him about the sale, but could not remember who else was present. Dr. Griffith had asked witness about two weeks ago if he had ever heard Ball say anything about the place and witness had told him what Alfred had said to him; Dr. Griffith had come to his house & asked witness to come up to testify. Witness had only this conversation with Dr. Griffith  
563 and he got a letter, which he produced, from Dr. Griffith asking him to come to town as a witness. Witness said he could not exactly remember the year this talk took place with Alfred, but it must have been the last of June or the first of July because Jim died sometime in June and Allie Ball in the following November: he did not remember anything else Ball told him about anything.

BENJAMIN J. W. SWAYNE, age 42, testified he used to visit Alfred Ball and visited him especially during his brother's illness. During this time Alfred told him about his property and said Dr. Stewart had been there to see him to buy that property, that he put the business in the hands of Dr. Griffith to attend to it and Dr. Griffith sold the property for him. He said he got five hundred dollars on it and the money was put in the Laurel bank, and he got \$40.00 an acre. Alfred said how often different payments were to be made but witness did not remember them but they were to be made at different times and one would be sometime in the fall and Alfred said it was to be surveyed.

On cross examination witness said he lived about a mile from the Ball place, that he had visited there ever since a little boy and that Alfred talked to him about it before Jim Ball's death. He remembered Alfred talking to him about it just about the time of his brother's death but he did not remember when he died. Asked how long it was before Jim died that Alfred told him the place had been sold and the money deposited in the Laurel bank, witness said he did not think it was more than a day or two. Jim Ball had also  
564 told him about the property and saying that—the oil place is near it—the oil men wanted to buy this property but they had talked about it on several occasions along about that time. He, Jim Ball, did not mention the name of the oil men. This was in the last days of Jim Ball's days. He said the first time Alfred told him about the sale and deposit in bank was about 2 days before Jim Ball died—guessed it was somewhere near June or somewhere along there. Alfred would talk about it when witness was over to see his brother. About a month ago in Marlboro witness had asked Dr. Griffith how he was getting along with the property, how near to a close he was and Dr. Griffith asked him if he had any conversations with Ball, and witness told him.

Dr. Griffith had told witness that he had won his case but Dr. Stewart had taken an appeal or something like that, and asked him if he had conversations with Ball. Witness never did any work for Dr. Griffith; he lived too far away. Witness had spoken to many

people and had told them what he had heard Ball say and he named some of those he had spoken to. He produced a letter from Dr. Griffith asking him to be present. One of the Richardson boys, he did not remember which, was there at the time witness had the conversation with Mr. Ball, but he did not remember Richardson saying anything about it and could not be sure whether Richardson was in the room but he was about. After the death of James witness did not visit Alfred much and these conversations were in the last days of James Ball. Witness had visited Alfred only once or twice since and was not sure whether Alfred said anything about the place then or not. Alfred had said to witness Griffith had sold it for 565 him and was telling witness how many payments it was to be made in and when they were to be paid. It seems to me that there was three, four or five of them but I do not remember how much it was each time. Asked if Alfred Ball said how much he was to get all together, witness said he did not seem to know, he said it would run over ten thousand dollars and he said it was to be surveyed and he would know more about it. Witness was at the house on the Sunday before Jim died and there again just before the death. He thought Jim died on Tuesday and very soon after leaving he heard Jim was dead.

On re-direct examination witness said Alfred praised Dr. Griffith for selling the property and spoke of the satisfactory manner in which he had transacted it. On re-cross examination witness said his last talk with James was about a week before his death. James was in bed.

SAMUEL J. FOWLER testified that Alfred Ball at Centerville one day said to witness I am coming down to board with you this winter. Witness had said he replied he would try to take care of him. Ball said Dr. Griffith sold his place. I said to whom; he said to Dr. Stewart. I said what did you get for it. He said I got \$40.00 an acre and five hundred dollars first payment. This fall I am to get another payment. I have not any place to go. I will board with you this winter. That was all that was passed.

On cross examination witness said this talk took place last of the summer or the first of the fall after Jim died. Witness said he had asked Ball why he was coming to board with him and that 566 had caused him to speak of the sale of his place. Witness works a little market stuff; hauls chickens etc. and is seventy years old.

RICHARD J. SWANN, 63 years, farmer and county commissioner of Prince Geo's County, testified Alfred Ball was the son of witness father's sister, which would make them cousins. Witness was at the funeral of James Ball and talked with Alfred. Alfred said he had sold his place and would have more money than he would know what to do with and said he wanted to consult witness. Witness replied Allie I have heard that you sold the place and Ball replied yes, it is in good hands and then told me Dr. Griffith was doing his business for him. Witness said he did not think Ball told him the



price but had said he would have more money than he knew what to do with and would get the money in November, as witness thought.

Witness said he had always lived in Prince Geo's County and Griffith's reputation for truth, veracity and honesty was all right. Witness never heard it questioned.

He had always known Ridgely, and asked his reputation for truth, veracity and honesty, responded it was very high and he was a man who was thoroughly trusted. Ridgely did a great deal of business in Marlboro and his judgment and veracity never had been questioned to witness' knowledge.

Over objection it was immaterial witness said he never had heard any of the heirs of Alfred or James Ball question anything or make accusation against Dr. Griffith in connection with the business. Witness was one of the heirs.

Witness said he lived about 5½ miles from Alfred and frequently saw him in the road as he passed. He could not remember when he had told Dr. Griffith of the conversation because he had not kept any dates of such things but he had told it to his women folks.

FRANCES E. McMANNUS, Episcopal clergyman at Marlboro for the past two years, testified that Dr. Griffith's neighbors thought as did witness as to the Doctor's truth, veracity and honesty and witness had a high opinion of him. He did not know Ridgely intimately but in the community he stood as a man of integrity.

On cross examination he said Dr. Griffith was a member of his church.

GEO. W. RICHARDSON, stock dealer and dealer in horses and cattle & farm a little, testified that most of his life he had lived about ½ mile from Alfred Ball. Shortly before Jim Ball died on a Sunday Alfred talked with him about the sale of his place. He said he had put it into the right man's hands and Dr. Griffith had sold it already. He said he had sold it to Dr. Stewart for \$40 an acre. He had gotten five hundred dollars on it and had it put in bank. I think he said in the Laurel Bank. Witness had advised him that he was an old bachelor and as he would have plenty of money to take care of himself would advise him to get a good place and board.

On cross examination witness said Jim Ball was in bed very ill this Sunday. There were a couple of men there waiting on him. One was Vincent Richardson and the other a man named Payne. Witness' talk had taken place out in the yard.

Witness had not kept any dates but it had not been so long ago that he had told Griffith of this conversation. His conversation with Allie Ball was in the summer if he was not mistaken. It was warm weather. It was directly after the sale was made that Alfred had spoken to him and Alfred had talked with him afterwards also. Witness had not talked before and said he knew nothing about it because he did not want to have anything to do with the case or to come up here. He heard that it had been settled and after this saw Dr. Griffith and Griffith knew witness and Ball used to be pretty

thick and asked witness if he had any of Ball's writings. Witness told him no and then the matter of conversation came up. Witness said that at this conversation Dr. Griffith had told him the case had been decided but they were trying to open it up on some charge of fraud or that he had forged something. Griffith asked witness if he had any of Ball's handwriting and he told Dr. Griffith of the conversations without his asking about them.

On re-direct examination witness said the Payne referred to was one who used to live down near Jim Ball's old place.

RICHARD W. HEREFORD, rural free delivery carrier, testified that in the last year of Ball's life he knew of Ball sending only one letter and one postal, that witness wrote the letter for him. Witness thought Ball had sent Griffith two verbal messages by him.

ALLEN BOWIE, 27 years, lawyer, at Stanley and Roberts 569 office in Marlboro, identified the signature of Ball, Roberts and Griffith on the bond on James Ball estate as having been signed by all three in Stanley and Roberts office and witnessed by him. The papers were introduced in evidence over objection.

W. R. SMITH, 53, register of wills of Prince Geo. County for over six years, testified Dr. Griffith's reputation for truth and veracity and honesty was good; he had never heard it questioned. He had known Ridgley for the past six years and had never heard Ridgley's reputation questioned.

Witness produced the renunciation of Alfred Ball and the bond of Dr. Griffith as administrator of the James Ball estate. The renunciation was of date July 2 & bond July 10. He also identified the signatures of Dr. Griffith, R. N. Ryan and J. K. Roberts to Dr. Griffith's bond filed November 17th, 1903, in the estate of Alfred W. Ball in the sum of one thousand dollars.

On demand counsel stated it was part of the chain of title and was offered as showing the bond had been fixed at one thousand dollars having in view the three hundred dollars in the Laurel Bank. There was also introduced in evidence an appraisement by Columbus Pumphrey and Swayne dated November 23d 1903 of personal property of Alfred W. Ball as amounting to \$13.55, but not a memorandum of \$300 in Laurel Bank attached thereto dated Sept. 24, 1904, although same was pasted on to it. The farm near Centerville was appraised as 240 acres at \$8 an acre.

Witness said over objection that the custom of Prince Geo.'s 570 County in fixing bond was to make inquiry of the applicant as to personal estate and to have a bond in double the amount. The administrator was supposed to file an inventory of goods & chattels not having a fixed value. It was not always required to file a report of money in bank or things of fixed value. The Court does not usually require that until the parties passed their account when they were supposed to report the personal assets. This account was usually passed 13 or 14 months afterwards.

There was also put in evidence an affidavit attached to the in-

ventory. The witness said he had pasted it on when Dr. Griffith subsequently reported the three hundred dollars in bank.

Witness said he had no recollection of it but the bond evidently had been fixed upon the approximate estimate by a verbal report that five hundred dollars was the approximate value of the personal estate. Dr. Griffith must have put it as that from the bond but he had no personal recollection. Dr. Griffith's affidavit of the money in bank was dated September 27th, 1904. Witness knew the bond had been fixed at a thousand dollars on the verbal statement. He never had heard any objection about Dr. Griffith's course in this matter from any of the heirs of Albert or James Ball. The long power of attorney had been in witness custody since November 17th, 1903, and to his knowledge, Dr. Griffith never had it out of his custody: that his recollection is Dr. Griffith always examined it in his presence.

Mr. A. W. Thomas had examined the papers in witness' office about two years ago. There was no question at that time  
571 raised, to his knowledge, as to the papers or their genuineness. Mr. Thomas examined them in witness' office at a table in a remote part of the room about 30 feet from his desk he supposed, and made copies of some of them. Dr. Stewart saw the papers about a month ago. On cross examination witness said he thought it was just before the time a suit was filed in Marlboro that Mr. Thomas examined the papers. Thomas had been there twice. Mr. Thomas was not out of witness' custody but was in the same room about 30 feet away. Dr. Griffith's examinations were very brief. Mr. Ridgely was with him once and Mr. Joseph K. Roberts once. His recollection was that the Doctor's inspection had taken place right in the vault at the file case with witness; the table at which Mr. Thomas examined them is right at the vault. He had no recollection of Dr. Griffith ever taking them ten feet away. He had known Dr. Griffith 16 years and knew no reason to stand by and watch him. Witness had no permanent clerk but sometimes had Mr. Emmett look out for him for a short time. Witness is not a member of the bar. There was no petition for letters filed in the case by Dr. Griffith for his appointment, the Court does not always require it.

The certified copy of the long power of attorney was in witness' handwriting. Witness was not usually in the habit of noting interlineations when he issued certified copies, not trying usually to copy exactly in form. From the copy he had certified 150 days and he must have taken that to be the number instead of six in the long  
572 power of attorney or he would not have put his certificate to it. He does not recognize the 5 as his figure but it may be.

He had no recollection of the original paper at all independently of the paper. In the certified copy he could not say whether or not he had written the five or not but he might have. Dr. Griffith had reported the cash in the Laurel Bank, as he recollected on the 27th of September, 1904, of three hundred dollars and witness had made up a statement and the doctor had made affidavit to it when witness called his attention that the executor had not sworn to the inventory.

On re-direct examination witness said he had called Dr. Griffith's attention to the fact the executor should make the affidavit of the inventory of the personal estate. Dr. Griffith had made it and had verbally reported the cash in bank.

He knew of no one having made the five in 150 except himself and he would have known if any one else had made it. Witness saw no reason to question A. W. Thomas' statement that it was in November 1903 he had examined first the papers in the Register of Wills office.

J. ALFRED RIDGELY testified that the signature to the long power of attorney, J. Alfred Ridgely, was his and that he wrote it, and that the Ball signature was written by Alfred W. Ball himself in witness' presence. The same person who wrote the Ridgely signature did not write the Ball signature. As nearly as he could recall, Ball stood up by a bureau or old sideboard and wrote it standing. Dr. Griffith, himself and Ball were present. The only conversation was  
573 that he asked Ball whether he knew the contents of the power of attorney and what he was signing and if he wanted witness to read it. He said no, he knew it or had read it. Witness said he had no special recollection one way or another concerning the interlineations. He took two acknowledgments of Ball that day; asked if Alfred Ball signed both of them he said "oh, yes." Once after that witness took Alfred Ball's acknowledgment and under objection upon being asked if the Jim Ball power of attorney was the one he identified it as the Jim Ball power of attorney. He had written his name and Alfred Ball his in witness' presence. He had no recollection concerning the interlineation "to" thereon. As he remembered it it was either in the house or on a wagon seat under a cherry tree that this last acknowledgment was taken. He knew that he had taken one or two of the acknowledgments in the house and remembered distinctly standing at an old piece of furniture at the window where the light shone in; he does not remember whether at that time they took one or two. One of the papers Ball acknowledged and signed at a wagon outside; whether that was the way he took one or two he did not remember but he distinctly remembered taking one out there. He took two acknowledgments on the first occasion and one the second. Those were the only times he had ever seen Ball. Witness identified the signature J. Alfred Ridgely to the typewritten copy of the agreement and power of attorney as in his handwriting. All four signatures were his. Witness said it was usual when making copies in his county to take an acknowledgment of the person to the paper in question. He had been a Justice of the Peace four  
years.

574 (Counsel for defendant insist upon all the questions and answers on cross examination in this witness deposition being included in place of the draft.)

On cross examination witness said he had no interest in the case at all. His only connection with it was he had taken some acknowledgments. He had known Dr. Griffith 20 years or more and had been attended by him in sickness: he had gone to him for medicine

and advice and so on. He knew the signature J. Alfred Ridgely because he put it there himself and knew his own handwriting. There was no mark on the paper he recognized except his signature and Ball's: that, to his knowledge he never noticed ink spots on the paper. He could not say anything as to whether he had noticed the body part of it or not. He knew his signature wherever he saw it. He knew the circumstances under which the signature was taken to some extent. There was no identifying mark. Asked suppose somebody had written a signature just like witness' witness replied it would not be very likely though it might be possible. He then would be very likely to know it if he could bring to mind some of the circumstances. All the signatures were alike though there might be some little difference according to different circumstances where made. He could not be sure which of the acknowledgments he had taken out under the tree. He knew Ball had signed in his presence and would not have taken the acknowledgment unless he did. Looking at it carefully the witness said he knew it more particularly because he had told Ball to get far enough back to make his signature before getting to the word "Seal," and distinctly remembered

575 that he went over the word "Seal" with his signature on the long power of attorney. Asked what led him to tell Ball to go far enough back witness replied: "Because usually here they are not accustomed to lines. Ball was pretty old, and if you don't guide them sometimes they will sign in the wrong place." He could not recall whether he had told Ball about this on more than one occasion or not. It was the first occasion when he said this. He had not read the paper over himself to Ball. He remembered telling him on this occasion and not on other occasions because this was the first time he was up there. Upon being asked if he had told him this when he took the Jim Ball power of attorney he said no because it was the 4th of June when he was first there and told him whereas the Jim Ball power of attorney was on the 27th. He could not say whether he had said it the second time or not. The letters in the second power of attorney in his name were larger and longer because he had more space. He had first probably heard from rumor there was some question about his signature, and he may have told him (Dr. Griffith) it was his signature that was on file in the Register's Office. He first heard from rumor there was some question of the signature and later Dr. Griffith spoke to him about it. He, witness, knew there were not any papers up in Washington with his signatures on them that there could be any dispute over. He had seen Alfred Ball write his signature only three times, but did not think he could be mistaken over those three signatures. There was a long cross examination as to

576 how witness knew that he knew the signatures. He said he knew the paper was taken on the 4th of June because he would not have left the paper with the date blank. If it was blank he would have filled it in there. It being in there was proof it was executed on that day. If it had been blank he would have filled it in. He identified it by the dates and the two signatures and the running over on the seal but admitted that the seal had been run over also on the Jim Ball power, but he knew the Jim Ball power of

attorney was not the one executed on the first visit because that day Ball did not blot the paper, but he did not know when the Jim Ball paper had been blotted. There were two papers taken on the first day and that, referring to the Jim Ball Power of attorney, might have been one of them.

Witness identified his signature on the typewritten copy of the power of attorney attached to the agreement, and said that, he thought, was made at Dr. Griffith's office. He knew it was not at Ball's house because he took no acknowledgment at Ball's house where the acknowledgment was written in anybody's handwriting, as was the fact in this case, referring to the short power of attorney. Witness said he knew nothing of the contents of the short power of attorney, but he had taken the acknowledgment at the time and Dr. Griffith had sworn to it. It was not the original paper. There were no original papers there that they had taken the day before. None were exhibited as far as he knew. Alfred W. Ball had sworn to the long power of attorney, that is witness had read the form of his certificate attached thereto and Ball had held up his right hand,

577 but upon being shown the two certificates, he said the difference between the acknowledgment and the certification was one was an affidavit and the other an acknowledgment.

Asked why he had allowed a man to swear a typewritten copy was a true and genuine power of attorney witness said that he did not know the contents. He could not have said what he would have done if he had seen the signatures attached were in typewriting, but the paper showed for itself. Besides being a justice of the peace he (witness) also worked a little at painting, and had done a little painting for Doctor Griffith last week—painting the inside of his offices.

On re-direct examination witness said that when he took the two acknowledgments of Alfred Ball Dr. Stewart drove up with Mr. Leapley to the place. Witness said that before he took the acknowledgment of Alfred Ball as nearly as he could remember Dr. Griffith went into the house and then afterwards came out and got witness and Ball acknowledged it. Everything was done in the usual way that witness always did the work.

Dr. LEWIS A. GRIFFITH identified the renunciation as having been signed by Alfred W. Ball in his presence, and also the other Ball signatures and Ridgely signatures as having been made in his presence and by the parties whose names were signed thereto.

The ratification witness said was signed by Alfred Ball in Ball's house. Witness was the attending physician of James Ball and from April to the 22d of June saw him at intervals of every day or two to the time of his death. It was at one of these visits that he received the receipt and ratification of Alfred Ball. Witness kept  
578 regular books in which he made a daily record of his visits made in the country not paid for. He did not always keep an accurate record of cash practice, but the visits to Ball were not paid for at the time and in the regular orderly course of business each night he made up his book and then later transferred them to



the ledger. He had first attended Ball in August, 1898, and Ball died either the night of the 21st or the morning of the 22nd, being dead when the witness got there on the 22nd. There was put in evidence the ledger and also the book of daily visits of Dr. Griffith covering the period in question, showing a number of visits to James Ball's and the amount of the charges therefor. One was dated June 19, \$2.50. The last visit was the 22nd when Ball was dead; some disinfectants and things were given to be used about the house and these were charged for as a visit. The book of daily visits was put in evidence and notice given the other would be produced at the trial.

Witness said that he received the bank book of Alfred Ball from Cashier Waters, and witness, he wrote to Waters and Waters sent it to witness and he thinks he gave Ball the bank book when Ball gave the witness the receipt for the \$400, including the ratification. After the death of Ball he found the bank book in a little trunk in Ball's house in which he kept his papers, and also some surveys and deeds, being those he gave to Latimer for his information. Witness sold Ball's personal property inventoried at \$13, and received for it \$45. When the will was probated the court asked witness what he knew about the personalty and witness replied it would approximate 579 about \$100. It was old furniture and stuff, and witness believed that Alfred Ball must have left in the neighborhood of \$100 from rent he had collected and from money given him by witness, and \$300 in the bank of Laurel, and he said to the Court the personal estate would approximate \$500, and the bond was fixed at \$1,000. There was a wagon and some other things that witness thought and knew belonged to Ball, but was claimed by Vincent Richardson, who had removed it from the premises. Vincent Richardson produced a receipt signed and written by Ball but afterwards in the settlement in the Orphans' Court witness made Richardson pay for it. The receipt purported to contain Ball's signature, the signature and body being in the same hand but in witness's opinion none of it was Ball's handwriting. Witness was very often up at Ball's house after the death of James because Alfred would send for him very often and he also asked witness to stop in when going by. Alfred sent him verbal messages and also at times would send him just a line to come up, signed A. W. Ball.

Witness said that from the time he received the long power of attorney from Ball there was no alterations made in the paper by him. He had left Ball's name blank because he had forgotten his full name and did not know how he generally signed, and as Roberts did not know that was left blank and witness put in A. W. in Ball's house and also made the other interlineations, namely "240," \$35 in two places, and "to be all" and he also put in the number of days there. The talk with Alfred Ball was that Stewart should have five months in which to make the next cash payment 580 and until the following Monday to pay the \$500 that was first to be paid down. In the acknowledgment also witness had written A. W. and the four referring to the date. Witness said

that he first took the power of attorney in the house and gave it to Ball who read it, he and his brother reading it together. Alfred asked witness then to call in Ridgely. Mr. Ball had the paper in his hand and handed it to Ridgely, and told him he wished to acknowledge it. Ball signed it in witness' presence and in the presence of Ridgely on the day designated.

At the time that witness and Mr. Thomas reached an agreement and the agreement was drafted Thomas had told witness he intended to have the paper recorded. Witness had given Thomas a power of attorney signed by Alfred W. Ball, and when the typewritten paper was made, which was the afternoon or night of the day Thomas was there, Thomas had left before the typewritten copy of the contract and short power of attorney was made, and witness made an acknowledgment which was usual to papers. He had been told it was necessary to make an acknowledgment to this power of attorney by Mr. Roberts. Thomas when he went away had taken at least witness had given to him the signed written contract and then he took away the power of attorney that he asked witness for when he came into his office signed by Ball. It differed in no way from the long power of attorney except it did not contain the conditions of sale—the commissions to be paid witness, etc.

On cross examination witness reiterated that no changes had been made after Ball's signature and he did not know whether it  
581 had been altered since or not. So far as he knew it was in the same condition as when it left his hands, though he could not say positively whether the 160 was the same as in his hand or not. He was unable to say whether he had put in 150 or 160 days. He had waited until getting to Ball's house to interline the days, the acres and price, because Ball had told him his price once or twice and witness had been asked to see if he could not get a better bargain, but when he got there the last time he asked Ball if he would take less and Ball said No, and witness told them what Ball said he would take. Witness did not know the number of acres exactly because Ball once or twice had said the land was nearer 275 acres than anything else. He thought at Ball's death he ought to have in the neighborhood of \$100. in money in his house.

JOSEPH K. ROBERTS testified that the body of the acknowledgment to the short power of attorney was in his handwriting and that he understood Thomas to say he would have the contract recorded. It was usual and customary in real estate powers of attorney to have the paper recorded and to have it acknowledged. The paper in question did not purport on its face to be other than a copy of a genuine power of attorney. It was supposed to be a copy of the power of attorney.

IRVING OWENS, of Hyattsville, Maryland, testified that he had lived in Upper Marlboro from 1901 to 1905, and was a bookkeeper and later assistant cashier at the bank there.

582 Asked what was the reputation of Dr. Griffith in the community for honesty, witness replied he had heard it said he was a man when he was interested that would stop at nothing,

nothing was too low for him to stoop to in order to accomplish his purpose.

On cross examination witness said he had heard the foregoing stated by Hampton Magruder, A. T. Brook, Phil W. Chew and maybe others.

Witness said he heard them say if he was interested he would not stop at anything to accomplish his purpose; had not heard Dr. Griffith's honesty itself discussed, and in response to the question whether he had heard them say Dr. Griffith was untruthful and very unreliable and very unscrupulous he said yes. It was these same parties who had said this and also John H. Traband. He did not recollect any others. Asked if it was not a fact that Mrs. Griffith had ordered him not to come to the doctor's house witness replied she never had told him that. He admitted, however, that he at one time did go to the house to see Mrs. Griffith's niece, and that those visits had ceased. Asked why and if he did not afterwards see the niece elsewhere witness said yes, that his visits ceased because he had no use for the owner of the house, and he and the lady afterwards married. He finally admitted that he had taken it for granted his visits were unwelcome owing to the fact he & Griffith were unfriendly. He had never had any dispute or words with Dr. Griffith, but it did not necessarily follow from that he liked him. He was inclined to think Dr. Griffith had said the niece could not come back to his house if she continued to associate with witness. He had made a dozen

583 visits to the house before this. The niece had been living at Dr. Griffith's house about ten years. He did not know whether he had ever heard from his wife, who was the niece in question, that Dr. Griffith had educated her and sent her away to school.

Witness in answer to a question whether his bitterness dated from some trouble in respect to his visit to the niece said his bitterness toward Griffith dated from some unprincipled and low things Dr. Griffith did to injure his wife and himself. It was true Griffith had interfered with witness' association with his wife's niece.

On re-direct examination witness claimed that a letter from him to the niece had been traced into the hands of Dr. Griffith after being delivered at the Post Office for her and after she had failed to receive it from the Post Office and that this was what he referred to by low acts. Mrs. Griffith received the letter opened and with an anonymous letter written on typewriter

WILLIAM S. HILL, cashier of the First National Bank of Southern Maryland, produced the bank account opened with the bank in the name of James T. Ball, or L. A. Griffith, Agent.

Counsel for complainant objected that it was not germane to the issue and they did not want to give a general license to wander, but at once withdrew the objection so far as the Jim Ball bank matter & accounting was concerned.

There was then put in evidence an account opened up April 28, 1903, in the name of James T. Ball or L. A. Griffith when \$400 was deposited. June 15, a check was drawn against it for 584 \$7.50, June 22 three checks for \$232.50, for \$100 and for \$60 respectively, which closed the account. Witness said the

checks he did not have, whereupon complainant offered & promised to produce the same. The bank had no other account with Griffith or the Balls.

Witness said he had taken the deposition of Hampton Magruder in which Magruder, who was State's Attorney, was asked as to the reputation of Ridgely and Mr. Magruder said he would have nothing to do with the interrogatories relating to Dr. Griffith, as to his acquaintance with Griffith and others who knew him.

On cross examination witness said that Mr. Magruder simply said he had nothing to do with them and would not answer. Witness identified the bank book taken out at the time the account was opened referred to. The book was put in evidence, being in the name of James T. Ball, or L. A. Griffith, Agent, showing deposit of \$400. The following checks were put in evidence: June 15, 1903, to the Julius Lansburg Furniture and Carpet Company \$7.50, signed L. A. Griffith, agent for James T. Ball, and the following checks all dated June 20, 1903, and all signed by L. A. Griffith, agent for James T. Ball, to the order of Kate Edlavitch for \$100, Hamilton Hall, \$60, L. A. Griffith, \$232.50.

Witness said over objection of defendants as not responsive that he knew Dr. Griffith and others who knew him in the community, and that his reputation for veracity, truth and honesty was good, it was excellent.

Witness said he never had heard Dr. Griffith's reputation discussed in an unfavorable manner. Witness said that he knew there  
585 had been very warm and to some extent bitter political differences between the opposing factions of Mr. Magruder and Dr. Griffith, and that there was a great deal of ill-feeling as a result of it, which Magruder, so far as he knew, shared those differences.

There was put in evidence subject to proof of signature later and over objection of irrelevancy, a receipt dated June 24, 1903, by Alfred W. Ball as follows:

\$392.50

JUNE 24TH, 1903.

Received of Dr. L. A. Griffith \$392.50, the same being amount in full deposited in the bank of Southern Maryland in the name of James T. Ball or his agent, L. A. Griffith.

ALFRED W. BALL.

THOMAS VAN CLAGETT, attorney at law, and president of the Board of Supervisors, Prince George's County, testified that he had heard a good many people say Dr. Griffith was untruthful. Asked his reputation for honesty witness said the Doctor had been engaged in a great many controversies of various kinds and he had heard people say he was tricky.

On cross examination witness said the controversies were political, business and social. Asked what matters of controversy witness said one of them was affecting Irving Owen. Owen had told him Griffith had treated him badly and had interfered in his private affairs. Witness admitted he had heard that Griffith had forbidden Owen to

586 communicate or call on a young lady in his (Griffith's) house. He had heard that from Owen himself. He did not base his statement entirely on that though. He had heard a great many people of high standing in the community say Griffith was untruthful. Asked to name them witness named Solomon M. Sweeney, Eugene Sweeney, Dr. Reverdy Sasser, Dr. Richard S. Hill, Thos. J. Grant, Wm. B. Clagett, Caleb C. Magruder, M. Hampton Magruder, Augustine T. Brook, Dr. Marine D. Humes, Dr. Chas. B. Jones. He had heard John H. Traband say time and again Griffith was untruthful and this not during political contests. Dr. Sasser had said the same thing. He had heard Dr. Hill on a number of occasions say Griffith was untruthful.

In answer to questions witness said Dr. Griffith was a very energetic and aggressive man, and had been involved in a great many controversies, political and otherwise, and he had a number of enemies. There were a great many people he said who thought Dr. Griffith not straight in politics. He had heard Irving Owen say Dr. Griffith was dishonest in business matters and also Charlie Jones. Aside from those two witness said the others that he had already mentioned had not qualified their statements in any manner or form or limited it to politics or business. To the best of his recollection all those he had named had stated the Doctor was tricky and would take advantage of you in his business dealings. Jones was a railroad hand. In answer to several questions witness admitted he had heard Griffith had sued Jones for non-payment of a professional bill. Sweeney was a butcher and there had been very bitter feelings between the Sweeneys and Griffith. Magruder and Griffith 587 had opposed each other in politics. Asked if Dr. Griffith had not defeated Magruder in the Democratic Primaries witness said that in 1899 he believed Griffith had won and had defeated Magruder. He denied that all those he named were political enemies of Griffith. Asked to name some who were not his political enemies, witness said Griffith had not been prominent in politics in the last two years.

Griffith had opposed the brother-in-law of witness, States Senator Wilson, now dead.

Griffith was a member of the State Board of Health and State Senator Clagett had voted to confirm him. Witness had said to Mr. Clagett that as Griffith had assumed a more consiliatory attitude toward the people he had abused, by-gones should be by-gones. Witness admitted Clagett had said this. Dr. Griffith had abused those opposed to him, and there was hard feeling.

Asked if he regarded a man untruthful, dishonest and tricky as proper to be confirmed as State Health Officer, witness said it was in the line of Griffith's profession, and that the feeling became less as the Doctor took less part in politics. Dr. Griffith had attended witness' family. He denied Griffith continued until witness' relative, Dr. Humes, moved to Marlboro, and said his mother discontinued Griffith because she had found something that he had said was not so. He said he did not know that his mother had written Dr. Griffith

a letter expressing regret that because a relative was there she would cease having the Doctor as the family physician.

588 Asked how he came to testify witness said he had been subpoenaed. He admitted having talked with Phil Chew and having said to Chew that if examined he would have to tell the truth and that he had heard a great many people say Griffith was untruthful. He had met Chew casually on a train. He was aware Griffith and Chew were bitter enemies and had heard Griffith had knocked Chew down, but denied that he had any feeling in the matter.

JOHN H. TRABAN, age 49, carriage and harness dealer, testified that Dr. Griffith's reputation for truth and veracity and honesty was good. He said he never remembered having said to Irving Owen Dr. Griffith would stoop to anything to accomplish his end: he was satisfied he had not said it to Mr. Owings but as to Mr. Clagett it might be different. He did not remember ever discussing Dr. Griffith with Mr. Owen or making any remark of the kind to anyone. He did not think it ever had occurred, he was satisfied it never had with Owens. He denied ever having said Dr. Griffith was untruthful or dishonest to anyone. He never had discussed Dr. Griffith with Owen at all. He denied absolutely he had ever said to Van Clagett Dr. Griffith was tricky and would take advantage of you in business dealings. As a matter of fact he had many business dealings with Dr. Griffith and never had found him so. Politically he and Dr. Griffith had opposed each other and the fights were very bitter. Asked if outside of any political acrimony he had ever known Dr. Griffith's veracity and honesty criticised witness replied his reputation as to truth, veracity and honesty were all right as far as he knew.

589 On cross examination witness said he did not remember ever saying to anybody Griffith was untruthful. He may have said Dr. Griffith was tricky in politics, and might have said he was untruthful in politics. Griffith never had made an untruthful statement to witness. In politics he had discussed Dr. Griffith's political character unfavorably. There was certainly difference between untruthfulness in politics and in business. Witness thought it permissible to be untruthful in politics. Dr. Griffith had ceased because of politics to be his physician. He might have said to Mr. Clagett that Dr. Griffith was not certain he had told Mr. Clagett Griffith had ceased to be his physician because he had grossly deceived him. He had never said to Clagett last Tuesday in Marlboro that Griffith was a scoundrel. He had come to Washington without being summoned because Dr. Griffith asked him if he would come and had said to him Owens and Clagett had said he was a rascal and would take unfair advantage of business.

On re-direct examination witness said that in political matters there had been hard feeling- and many things said that should not have been.



AUGUSTIN T. BROOK, age 63, Deputy Treasurer of Prince George's County, had known Dr. Griffith 25 years. In business relations he had never heard Dr. Griffith's reputation for truth, veracity and honesty questioned. He had never discussed Dr. Griffith with Owen except in a political way, and had no recollection of ever telling him Dr. Griffith would stoop to anything. He had no recollection of ever saying to Van Clagett that Griffith was untruthful and dishonest. He had discussed him a great deal politically but not in a business way, and did not recall making the remark stated. He had had a great many discussions, but all about politics. He was positive he had never discussed Griffith in business.

There had been hard feeling between himself and Griffith over politics for the last six or seven years and they did not speak for several years. They were bitter factional fights. He had no recollection of ever saying Griffith would not tell the truth and had no recollection of ever discussing Griffith except during politics and social relations. In business affairs he had always considered him straight-forward and honest. Griffith was a leader of one faction and very hard things were said generally by each about the other faction.

On cross examination witness said Van Clagett's reputation for truth and veracity was excellent & had never heard it questioned at all and he would, from it, believe him under oath. He meant he had discussed Dr. Griffith and heard him discussed in his political and social relations unfavorably & he had never heard Mr. Clagett discuss unfavorably even in politics.

On re-direct examination witness said that Griffith had not been as politically active as formerly, and he had not heard any recent discussions of him. Dr. Griffith had been appointed a member of the State Board of Health and had warmly opposed former State Senator Wilson, Van Clagett's brother-in-law. It was during that time that hard things were said on each side about the other.

RICHARD S. HILL, age 42, farmer and physician, had known Griffith 25 years, and his reputation for truth, veracity and honesty was good, and in a business way he had never heard anything said against Dr. Griffith's standing as an honorable and truthful man of business, and professionally, but politically they had been opposed, and whichever had the best control of the English language used it against the other politically. Witness and his family had had personal business dealings with Dr. Griffith and they had always been satisfactory. Witness never in his life had said Dr. Griffith was untruthful to Van Clagett or anyone else, and he could not remember ever saying he was dishonest. He did not think he could have ever used that expression. He was satisfied it never occurred. Witness was a member of the legislature and of the Governor's Staff. Van Clagett was certainly mistaken when he said witness had said Griffith was tricky and would take advantage of you in business. The political fights were very warm and bitter, and Van Clagett and he fought against Griffith.

On cross examination witness said Van Clagett's reputation was

good. Griffith had made some pretty strong political statements about witness, but he could not recall that any of them were untruthful, there was a semblance of truth in them but they were exaggerated like all political matters. Dr. Griffith had told witness what Van Clagett had said and had asked witness to come to Washington, but had not asked witness whether he ever had said the things or not and witness did not tell him. Witness did not know he ever had said

592 Griffith was untruthful in any way, though he could not remember all the things he had said in politics. Dr. Griffith had written an anonymous letter about him in which most of the things he said were true. He would not like to answer the question whether all the statements in the letter were true unless he had the letter before him to read it. All he remembered were true.

Dr. GRIFFITH testified that in April, 1903, James Ball told him he and Allie had some money and did not want to keep it in the house. He asked witness to keep it for him, but witness told him he could not do that, but would put it in bank for him. James said he was sick and suggested witness put it in bank in his name as agent. He went to an old bureau and counted out \$400, for which witness gave him a receipt and then took the money to the bank. It was the latter part of April, and he deposited the money in the name of James T. Ball by his agent, L. A. Griffith, took the book, and gave it to Ball. Ball grew worse and a few days before death said to witness there was no chance of his getting well, and he wanted Allie to have the money. Allie said he did not want witness to bring it up, but James said he wanted Allie to have it. That was on the 18th or 19th of June, Thursday or Friday, and on Saturday afternoon when witness was going up there he went to the bank to get the money, but the bank was closed. Witness drew a check for \$60 for one store and \$100 for another store and together with what money he and Mrs. Griffith had and some they borrowed they made up \$392.50. With the other \$7.50 he had bought a Morris chair at Lansburg's. In James Ball's presence on the evening of the

593 20th he handed the money to Allie Ball. James died sometime during the night of the 21st. The day of the funeral, the 23rd, witness was asked by Allie to come up the next day and bring up his bill, as he wanted to talk business with him. Witness took his bill up and Allie said he wanted to pay it and did pay it. Witness said to him "Old man you did not give me any receipt for the money I gave you. I gave you a receipt and you must give me one." He said "very good," and signed this receipt and handed it to me. Witness produced the receipt for \$392.50, signed by Allie Ball and \$7.50 for a Morris chair. The receipts were offered in evidence. Alfred Ball later gave the Morris chair to a sick son of George Richardson. Jim Ball had seemed anxious Allie should have the money, and witness had told he would bring it up and deliver it in his presence. Witness produced a check to Kate Edlavitch for \$100, to Hamilton Hall for \$60, and to witness for \$232.50, making up the total of \$392.50 drawn out by him as agent of James T. Ball.

Asked what was done with the money given Alfred Ball, witness said Alfred Ball paid witness' bill with it and one or two bills due in the neighborhood, for which receipts would be found in the papers of James Ball's estate. Alfred did not seem to know it was necessary to take out letters on the estate of James Ball, but witness under objection, told him he would have to do it or the title to the real estate would not be good, and Alfred asked witness to attend to it for him.

It was figured the probable indebtedness of James Ball would be about \$300. Alfred gave witness \$300 in money and witness 594 gave him out of it what money he had to make up the amount he had already paid. It was figured there would be two rent payments of \$25 each coming from James Ball's farm at Red Corners. Alfred Ball renounced as administrator and letters were granted witness, who paid James' debts and closed up the estate and passed the balance to Alfred Ball's account, that is out of the \$392.50 James returned witness \$300 and there was \$50 rent money. On cross examination he said that he had not delivered to Mr. Merillat the receipt of Alfred Ball mentioned in his foregoing examination until they were hunting up signatures of Alfred W. Ball and the case was reopened after the original decree. Before any depositions were taken on the rehearing. It had been in Merillat's possession ever since. He thought he put the money belonging to Jim Ball given him by Allie after Jim's death in Laurel Bank to his own credit. Alfred gave him \$300 in money after the 24th.

Dr. Griffith's final account was put in evidence, as were vouchers, and checks as follows:

Scott Armstrong, funeral expenses \$108; Benjamin Swain, appraiser, \$2; Columbus Pumphrey, appraiser, \$2; C. W. Mark, \$25; John P. Hawkins, and J. T. Hawkins, \$25; R. N. Ryon, taxes, \$12.99; D. V. Richardson, \$25; L. A. Griffith, professional services and medicines, \$48.75; New Era Publishing Co., \$5; W. R. Smith, Register, \$16.60; W. R. Smith, collateral inheritance tax, \$30; on real estate; W. R. Smith, \$.36 on personal property; witness' commissions \$35; balance \$14.30, turned over to Alfred Ball's estate.

The paper showed the account had been passed. Vouchers 595 were put in for all of these moneys. The payment to Richardson showed it had been made by Alfred Ball on June 27th or 26th. The witness said this had been made by Ball before he realized he had to take out letters of administration. Witness said the payment to Mr. Mark was made by direction of A. W. Ball. Witness did not know what it was for, but Alfred told him Jim had promised it to Mr. Mark, the minister who buried him and visited him in his last illness. Witness said that the receipt of Alfred Ball to himself he gave to Mr. Merillat when they were hunting up signatures of Alfred Ball after the case had been reopened. Immediately after that he asked witness for it; it was before any depositions had been taken. He had not seen it since then until witness asked Mr. Merillat for it when the matter about James Ball's property was brought up. Witness had given Ball a receipt for the \$300, he had given to Alfred Ball and had found the receipt for the \$400 he had

given James Ball. It might be at his house, and he would produce it if he could find it. He did not open up an account with the \$300 James Ball gave him, and Mr. Smith himself put in the memorandum to that effect. The people were all living in the neighborhood and he gave them the money except one check to Scott Armstrong and may have put the money to his own credit in bank. Witness had stated to Mr. Smith, the Register of Will-, about the money and the account had been made up by Mr. Smith.

W. R. SMITH, Register of Wills, produced the papers, vouchers, and final account of Dr. Griffith as administrator of James Ball's estate and said the final account was in his handwriting and  
596 had been stated by himself there was nothing of record to show it had been reported otherwise than verbally. It had been passed in the usual and ordinary way and from vouchers submitted by Dr. Griffith he thought that Dr. Griffith had verbally reported the amount to be charged against himself to the court, and nothing in the record shows when the report was made.

On re-direct examination witness said the bond in James Ball's case was \$600, and it was put in evidence. He said it had been made in double the amount reported under the usual practice; that its amount presumably from their practice was fixed when letters were ordered issued conditionally upon filing the bond and at the time the appraisers were appointed. The practice was to make a verbal statement to the court of the amount as estimated of the personal estate known to be in hand and that thereupon the court fixed the bond.

JOSEPH K. ROBERTS testified that Dr. Griffith was his client and had told him one day Ball was very ill and the chances were he would die, and he told Griffith it was advisable to draw out the money in cash, that he could get the money around there, as the bank was closed and that it had better be done.

On cross examination witness said the money was in bank as James Ball's or L. A. Griffith's. Witness understood it was James Ball's money and as Alfred was the only party entitled to it, and as he knew there were no creditors, knowing him personally and that he was a very straight man, witness thought it would be just as well to draw out the money. Witness thought it was about six  
597 o'clock Saturday this occurred. It was a day or so before Ball died. Witness had met Griffith either on the street or in Griffith's office when Griffith asked him about it. Griffith had told him how the money was deposited and under all the circumstances witness thought perhaps the bank might be disposed to treat it as a joint ownership, and that Griffith could draw out only half of it and so he had told him to get it in money before Ball's death.

Under a stipulation of counsel the testimony of several witnesses as to reputation of Griffith and Ridgely was taken by affidavit before a Notary Public.

Judge GEORGE MERRICK, judge of the circuit court in which Prince George's County is located, and living at Marlboro, and the Rev. Father SCHWOLLENBURG, of the Roman Catholic Church, stationed at Marlboro, testified that Dr. Griffith's reputation for truth, veracity and honesty was excellent, and they never had heard it questioned.

Mr. HAMPTON MAGRUDER, State's attorney, and Mr. FREDRICK SASSER, editor of a newspaper at Marlboro, testified that Ridgely's reputation for truth, veracity and honesty was good.

Mr. Magruder refused to answer some questions propounded on cross-examination as to Dr. Griffith. These question asked if he had known Dr. Griffith, how long he had known him, etc.

598 COMPLAINANT'S EX. B; also Marked COMP. EXHIBIT 10.

Duplicate.

This agreement made by and between L. A. Griffith, duly authorized agent and attorney, under certain Power of Attorney, of Alfred W. Ball, both of Prince George's County, State of Maryland, party of the First Part, and William W. Stewart, of Washington, D. C. party of the Second Part.

Witnesseth, That said Stewart has paid to said Griffith, agent as aforesaid, the sum of Five Hundred Dollars (\$500) part purchase price of the total sum to be paid for a certain tract of land owned by said Alfred W. Ball, near Centerville, (Meadows P. O.) County of Prince George, State of Maryland, containing Two Hundred and Forty acres (240) more or less, at the rate of Forty (\$40) Dollars per acre, which said sum of \$500. is hereby acknowledged to have been received by said Griffith, Agent as aforesaid, and said Griffith, as said agent and duly authorized attorney of said Ball, hereby grants bargains and sells, and agrees to convey by proper deed in fee simple free of all encumbrances of every nature, duly executed by said Ball, to said Stewart said 240 acres of land, upon further payments and conditions hereinafter named, to wit, the balance of one half of said purchase price of said 240 acres at the rate of \$40 per acre, is to be paid to the party of the First Part on November 7th, 1903, and the remaining one half of the total purchase price is to be divided into five equal payments, secured by five promissory mortgage notes upon  
599 said property to be given by said Stewart duly signed and executed by him payable to said Ball, or order, for said equal one fifth sum of remaining one half of said purchase price aforesaid, to become due and payable in one, two, three, four, and five years after said November 7th, 1903, respectively, bearing interest at the rate of six per cent. per annum, payable semi-annually. The said land is the same tract or parcels of land whereon the said Alfred W. Ball now resides, and said party of the First Part reserves therefrom a certain burial lot of one acre in extent for burial purposes, conditioned however, that if said Ball should desire to abandon said burial tract and remove the remains there interred, he shall

have paid to him therefor by said party of the Second Part the sum of Forty Dollars (\$40) in consideration thereof, said Ball to have access by road leading to said burial lot at all times.

The said land is to be surveyed and plat made thereof and the total purchase price is to be at the rate of Forty dollars per acre as determined by said survey. The costs of said survey is to be paid one half by said Stewart and one half by said Griffith.

Proper deed or deeds of conveyance, and abstract of title of said land, and title search therefor, to be made showing clear unincumbered fee simple title in said lands in said Grantor Ball, and one half of the cost thereof, not exceeding in all the sum of Fifty Dollars, is to be paid by said Stewart, and one half by said Griffith.

In case the payment of the remainder of the first half of said purchase price is not paid on November 7th, 1903, then the said sum of Five Hundred dollars, so paid to said Griffith, as aforesaid, is to be forfeited, and the contract of sale and conveyance to be null and void, otherwise to remain in full effect according to the terms and tenor hereof. The said Ball to have the right to continue to dwell in the house now occupied by him on said land and to cut and use necessary fire wood therefrom up to April 1st, 1904; and the taxes for the year 1903 are to be paid one half by said Ball and one half by said Stewart.

The possessory right to all of said premises is to remain in said Ball until the payment herein provided for on November 7th, 1903, has been duly made.

In witness whereof the parties hereto have set their hands and seals this 5th day of June, 1903.

L. A. GRIFFITH,  
*Agent for A. W. Ball. (n. s.)*

A. W. THOMAS,  
*Agent for W. W. Stewart. (n. s.)*

Witness:

J. K. ROBERTS.

601 DEFENDANT'S EXHIBIT W. W. S. No. 5; Also Offered by Complainant, at Page 13 of Complainant's Testimony, as COMPL'T'S EX. No. A<sup>11</sup>.

(Original.)

This agreement made by and between L. A. Griffith, duly authorized agent and attorney, under certain Power of Attorney, of Alfred W. Ball, both of Prince George's County, Maryland, party of the First Part, and William W. Stewart, of Washington, D. C. party of the Second Part.

Witnesseth—That said Stewart has paid to said Griffith, Agent as aforesaid, the sum of Five Hundred Dollars (\$500) part purchase price of the total sum to be paid for a certain tract of land owned by said Alfred W. Ball, near Centerville (Meadows P. O.) County of Prince George, State of Maryland, Containing Two Hundred and Forty Acres (240) more or less, at the rate of Forty (\$40) per acre, which said sum of \$500, is hereby acknowledged to have been received by said Griffith, Agent as aforesaid, and said Griffith, as said



Agent and duly authorized attorney of said Ball, hereby grants, bargains and sells, and agrees to convey by proper deed in fee simple, free of all encumbrances of every nature duly executed by said Ball, to said Stewart said 240 acres of land upon further payments and conditions hereinafter named, to wit, the balance of one half of said purchase price of said 240 acres at the rate of \$40 per acre, is to be paid to the party of the First Part on November 7th, 1903, and the remaining one half of the total purchase price is to be divided  
602 into five equal payments, secured by five promissory mortgage notes upon said property given by said Stewart duly signed and executed by him, payable to said Ball or order, for said equal one fifth sum of remaining one half of said purchase price aforesaid, to become due and payable in one, two, three, four, and five years, after said November 7th, 1903, respectively, bearing interest at the rate of six (6) per cent. per annum, semi-annually.

The said land is the same tract or parcels of land whereon the said Alfred W. Ball now resides, and said party of the First Part reserves therefrom a certain burial lot of one acre in extent for burial purposes, conditioned however that if said Ball should desire to abandon said burial tract and remove the remains there interred, he shall have paid to him therefor by said party of the Second Part the sum of Forty dollars in consideration thereof, said Ball to have access by road leading to said burial lot at all times. The said land is to be surveyed and plat made thereof and the total purchase price is to be at the rate of Forty dollars per acre as determined by said survey. The costs of said survey is to be paid one half by said Stewart and one half by said Griffith.

Proper deed or deeds of conveyance and abstract of title of said land and title search therefor to be made, showing clear unincumbered fee simple title in said lands in said Grantor, Ball, and one half of the cost thereof, not exceeding in all the sum of Fifty dollars, is to be paid by said Stewart, and one half by said Griffith.

603 In the payment of the remainder of the first half of said purchase price is not paid on November 7th, 1903, then the said sum of Five Hundred dollars, so paid to said Griffith, aforesaid, is to be forfeited, and the Contract of Sale and Conveyance to be null and void, otherwise to remain in full effect according to the terms and tenor hereof. The said Ball to have the right to continue to dwell in the house now occupied by him on said land, to cut & use necessary fire wood therefrom up to April 1st, 1904; and the taxes for the year 1903 are to be paid one half by said Ball and one half by said Stewart.

The possessory right to all of said premises is to remain in said Ball until the payment herein provided for on Nov. 7th 1903 has been duly made.

In witness whereof the parties hereto have set their hands and seals this 5th June 1903.

L. W. GRIFFITH,

*Agent for A. W. Ball.* [N. S.]

A. W. THOMAS,

*Attorney for W. W. Stewart.* [N. S.]

Witness:

J. K. ROBERTS.

604 COMPLAINANT'S EXHIBIT E; Also Marked 12.

Filed March 29, 1905.

JUNE 19", 1903.

I Alfred W. Ball having received from my duly authorized agent and attorney Dr. L. A. Griffith the sum of Four Hundred Dollars, do hereby ratify and confirm the sale made by him to W. W. Stewart of my real estate near Meadows, Pr. Geo. County Md. This is with the understanding that if said sale is consummated & one half of the purchase money be paid cash, that Dr. L. A. Griffith my agent and attorney shall pay out of his commission—one half of the cost of surveying and attorney's fee—the other half by W. W. Stewart—otherwise I am to pay the cost of surveying and attorney's fees.

ALFRED W. BALL.

605 EXHIBIT A<sup>13</sup>.MARYLAND, *set*:

The State of Maryland to all Persons whom these Presents Shall Come, Greeting:

Know ye, that the last will and testament of Henry J. Ball of Prince George's County, deceased, hath in due form of law been exhibited, proved and recorded, in the Office of the Register of Wills for said County, a copy of which is to these presents annexed, and administration of all the goods, chattles and credits of the deceased is hereby granted and committed unto Alfred W. Ball, the Executor by the said will appointed.

Witness James B. Belt, Chief Justice of the Orphans' Court for Prince George's County, this Eighteenth day of September in the year 1877.

Test:

JOHN A. FRASER,

*Register of Wills for Prince George's County.*

In the name of God Amen, I Henry Jackson Ball of Prince George's County in the State of Maryland, being of sound and disposing mind memory and understanding considering the certainty of death and uncertainty of the time thereof, do make publish  
606 and declare this and none other to be my last will and testament, revoking and annulling all former wills by me heretofore made ratifying and confirming this to be my last will and testament, in manner and form following: That is to say, first and principally I commit my soul into the hands of Almighty God, and my body to the earth to be decently buried at the discretion of my Executor hereinafter named and after my debts and funeral expences are paid I give devise and bequeath as follows—Item to my son Alfred Wilmer Ball I give devise and bequeath all my real estate I now own or may own at the time of my death, also all my personal estate of

every kind and description, unto him the said Alfred Wilmer Ball his heirs and assigns forever, this bequest to my said Son Alfred Wilmer Ball is what I consider due to him in consideration of his always uniform kindness and untiring efforts to protect and take care of me in my advanced age, and I may add my entire dependance has been on him for years—

And Lastly I hereby constitute and appoint my said Son Alfred Wilmer Ball sole Executor of this my last will and testament.

In testimony whereof I hereunto subscribe my name and affix my seal this first day of October in the year of Our Lord one thousand Eight hundred and seventy five—

his  
JAMES J. x BALL. [SEAL.]  
mark

Signed, Sealed and acknowledged by Henry J. Ball the above  
named testator as and for his last will and testament in our  
607 presence, at his request, in his presence, and in the presence  
of each other, as witnesses thereto on the day and year above  
written.

THOMAS J. TURNER.  
WM. A. JARBOE.  
F. NELSON JARBOE.

SEPT. 10TH, 1877.

PRINCE GEORGE'S COUNTY, *set*:

Then came William A. Jarboe and F. Nelson Jarboe two of the subscribing witnesses to the within and foregoing Will of Henry J. Ball late of Prince George's County, Maryland, deceased, and made oath on the Holy Evangely of Almighty God, that they did see Henry J. Ball the Testator herein named, sign and seal said Will, and heard him publish, pronounce and declare the same to be his last Will and Testament, that at the time of his so doing, he was, to the best of their apprehension of sound and disposing mind, memory and understanding, and that they together with Thomas J. Turner the other subscribing witness, in the presence of the Testator at his request, and in the presence of each other, respectively subscribed their names as witnesses thereto.

Sworn before

JOHN A. FRASER,  
*Reg'r of Wills.*

PRINCE GEORGE'S COUNTY, *set*:

Then came Thomas J. Turner the other one of the subscribing witnesses to the within and foregoing Will of Henry J. Ball late of Prince George's County, deceased, and made oath on the  
608 Holy Evangely of Almighty God, that he did see Henry J. Ball the Testator herein named, sign and seal said Will, and heard him publish, pronounce and declare the same to be his last Will and Testament, that at the time of his so doing, he was, to the

best of his apprehension of sound and disposing mind, memory and understanding, and that he together with William A. Jarboe and F. Nelson Jarboe the other two subscribing witnesses in the presence of the Testator, at his request, and in the presence of each other, respectively subscribed his name as witness thereto.

Sworn before

JOHN A. FRASER,  
*Reg'r of Wills.*

STATE OF MARYLAND, *Prince George's County, To wit:*

I John A. Fraser, Register of Wills for Prince George's County, hereby certify that the foregoing is a true copy of the last Will and Testament of Henry J. Ball late of the County aforesaid, deceased, duly proven and now upon Record in my Office.

In testimony whereof I hereunto subscribe my name and affix the seal of the Orphans' Court of Prince Georges County this 9th day of November A. D. 1877.

[SEAL.]

JOHN A. FRASER,  
*Reg'r of Wills.*

THE STATE OF MARYLAND,  
*Prince George's County, set:*

609 I, W. R. Smith, Register of Wills for Prince George's County, do hereby certify that the foregoing is a true copy of the last Will and Testament of Henry J. Ball and the probate thereto as recorded in Liber W. A. J. Jr. No. 1 folio 117 one of the Record books of the Office of the Register of Wills for said County.

In testimony whereof I hereunto subscribe my name and affix the seal of the Orphans' Court of said county this 30th day of August in the year of our Lord nineteen hundred and four.

Test:

[SEAL.]

W. R. SMITH,  
*Register of Wills for Prince George's County.*

MARYLAND, *set:*

I, D. T. Sheriff, Chief Judge of the Orphans' Court of Prince George's County, in the State aforesaid, do certify that the foregoing attestation of W. R. Smith, Register of Wills for said County, is in due form, and by the proper officer.

Given under my hand, at the Town of Upper Marlborough, this 30th day of August, in the year of our Lord one thousand nine hundred and four.

D. T. SHERIFF,  
*Chief Judge.*

610 STATE OF MARYLAND, *set:*

I, W. R. Smith, Register of Wills for Prince George's County, in the State aforesaid, do certify that D. T. Sheriff, Esquire, whose genuine signature is attached to the foregoing certificate is, and

was, at the time of signing the same, Chief Judge of the Orphans' Court of said County, duly commissioned and qualified.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the Orphans' Court aforesaid, this 30th day of August, A. D. 1904.

[SEAL.]

W. R. SMITH,  
*Register of Wills.*

611

COMPLAINANT'S EXHIBIT A<sup>14</sup>.

*Caption.*

An abstract of the title of Alfred W. Ball, of Meadows, Prince George's county, Maryland, in and to a tract of land in the said county called and known as "The Childs' Portion," and also a tract of land in said county known as "Crotch Hall" and "Addition to Crotch Hall," all supposed to contain about two hundred and thirty-nine acres of land (239).

JUNE 11, 1903.

No. one.

Josiah Moore  
to  
John Reed Magruder.

Deed dated February 23, 1792. Liber J. R. M. No. 1, folio 143.

Grants a tract of land in Prince George's County, Maryland near Centerville called "Addition to Crotch Hall" described fully by metes and bounds therein. Containing 100 acres of land, being the same land conveyed to him Josiah Moore by Alexander C. Moore, April 8, 1784.

No. 2.

Peter Howard  
to  
John Reed Magruder.

Deed date June 28, 1794. Liber J. R. M. No. 3, folio 108.

Grants a tract called "Moore's Adventure which was granted by Patent to Peter Moore Jr. in the year 1766 Containing 50 acres of land, described as being near Henson Branch.

This is not a part of the property mentioned in the Cap-  
612 tion.

## No. 3.

William Baker, Overton Carr, and Francis Tolson, a majority of the commissioners appointed to divide or sell the real estate of James Moore,

to  
John Reed Magruder.

Commissioners' Deed, April 14, 1802. Liber J. R. M. No. 9, folio 213.

Recites the death of James Moore intestate and the petition filed in the County Court of Prince George's County, Md. to have his real estate in the said County divided among his heirs or sold for division. That a public sale was had on the December 18, 1797 and the property was sold at the public auction to the said Magruder by the said three Commissioners and the sale was ratified by the County Court April 14, 1802 upon their Report of Sale filed in the said County Court. Grants in fee the following property of which James Moore died seized and possessed in said County. A tract of land called "The Child's Portion" containing 100 acres. (2) Also the "Joint Enlargement of Crotch Hall" containing 39 acres of land. (3) A tract called "Moore's Gain" containing only Ten (10) acres of land.

## No. 4.

John Reed Magruder

to  
Jane Contee Marbury, his daughter, wife of Wm. Marbury.

Liber J. R. M. No. 13, folio 386. Deed in fee, September 11, 1809.

Grants all the above tracts of land reserving to himself a life estate therein.

613 William L., John H., and Alexander M. Marbury.

to  
Jane Contee Penn, born Marbury.

Liber A. B. No. 6, folio 302. Deed in fee, November 6, 1830.

Recites the death of their mother Jane Contee Marbury intestate, leaving the grantors and the grantee her only 4 living heirs at law, to whom the said real estate of their mother descended, and that they are willing to release unto their sister Jane C. Penn all their right title and interest in and to the above property. Grants all their right title and interest in the above property conveyed to their mother Jane C. Marbury by their grandfather John Reed Magruder, as above set forth.



Hanson Penn and Jane C. Penn  
to  
Henry Jackson Ball.

Liber A. B. No. 8, folio 14. Deed in fee, April 1, 1833.

Grants in fee the said property conveyed by Magruder to his daughter Marbury and as above conveyed to Mrs. Jane C. Penn.

NOTE.—Another portion of the Ball title, starts here. Will of John Baptist Kerby, dated November 15, 1827. Probated May 10 1828 Will Record "T. T." No. 1 folio 429. Testator devised to his nephew Samuel Kerby among other devises to others not necessary to mention herein, the following property, "A tract or piece of land near Centerville in said County of Prince George's County, called "The Child's Portion" containing 27 acres of land. This will is in legal form and properly executed.

Samuel Kerby  
to  
Henry Jackson Ball.

Liber A. B. No. 7, folio 85. Deed; date, January 26, 1832. \$100.

Grants the above land 27 acres.

614 Henry J. Ball and wife  
to  
George T. Hardy.

Liber O. N. No. 1, folio 307 (307). Deed; date, October 22, 1852.

Grants in fee a tract of land called "Moore's Adventure" containing 50 —, and mention in deed from Jno. Reed Magruder to Jane C. Marbury shown above.

No. 10.

Henry J. Ball and wife, Elenor,  
to  
Chas. F. Calvert.

Liber C. S. M. No. 3, folio 122. Deed dated February 14, 1859.

Grants for the sum of \$1158.40 and a note of Cecilius B. Calvert for \$135.84 the following property. Grants part of a tract of land called "Crotch Hall" which lies North of the R. R. from Centerville to Alexandria, and which is described as follows,

Beginning at a stone standing at the Junction of the Long Old Fields" and Piscataway Road with the Centerville and Alexandria road, the same being the Sixth (6th) bound of Edward Darcy's part

of a tract of land called "Chance," and running thence with the Alexandria Railroad the following courses and distances metes and bounds, South 71 degrees West 49 and  $\frac{1}{2}$  Perches, then South 83 deg. West 26 perches to a stake and stone, at the end of 55 perches on the second line of the original Plat, thence with the said second line North 46 deg's, West 151 Perches, to a stone, thence North 95 and  $\frac{1}{2}$  perches, then South 84 degrees, East 88 Perches, to a stone, then South South 75 degrees, West 5 perches, thence South 615 1 and  $\frac{1}{4}$  degrees, West 127 perches, thence South 44 degrees, East 44 perches, Thence South 87 and  $\frac{1}{2}$  degrees, East 61 and  $\frac{3}{4}$  perches, thence South 31 degrees, East 5 Perches to the beginning. The number of acres in the above grant is not given.

Henry J. Ball and wife  
to  
George F. Mayhew.

Liber *Liber* H. B. No. 12, folio 242. Deed; date, April 16, 1877.  
\$115.

Grants a piece of land called a part of the "Addition to Crotch Hall" containing 7 acres of land in fee.

Last Will and Testament of Henry Jackson Ball, dated October 1, 1875. Probated September 10, 1877. Will Record W. A. J. Jr. No. 1 folio 117. Duly executed according to law with Three witnesses to its execution, by him, *Provided* as follows, Devises all his property real and personal to his son Alfred Wilmer Ball in consideration of his constant care and attention to *me*, all the property which he now owns or may hereafter acquire, and appoints the said Alfred Wilmer Ball to be the sole Executor of the said Will.

End of Henry J. Ball, title.

*Commencement of the Part of the Alfred W. Ball Part of the Title.*

This is a part of a tract called "Crotch Hall" and being the part of the said Crotch Hall of which a certain Nathan Summers late of the said county of Prince George's County, Maryland, died seized and possessed.

616 The said Nathan Summers died about year 1840 leaving the following children, to wit, Louisa Summers, Ann Maria Sommers, Ann Marshall wife of Richard H. Marshall, James Summers, Henrietta Summers, Henry Summers, Warren Summers, Thomas Summers, Deborah Berry wife of — Berry, and Mary Cecil wife of Samuel Cecil. He died seized of the real estate in the said County, called "Magruder' Plains, "John's Choice" "Belfast" "Grey Eagle, Enlarged," "Chillum Castle Manor" and "Crotch Hall," in all about 1223 and  $\frac{1}{2}$  acres as appears on the plats filed in the Court of Chancery in the Land Office in Annapolis, Maryland where the old Chancery records are, and which or rather a copy of the same is filed in the case of Nathan Bickford and wife *vs.* Summers *et al.*, No. 186 Equity in the Circuit Court for Prince

George's County, Maryland. The real estate of the said Nathan Summers containing as above stated 1223 and  $\frac{1}{2}$  acres was divided in the Court of Chancery of Maryland in the year 1844 and by the final decree in partition filed in the Court of Chancery in the case therein of Summers *et al. vs. Summers et al.*, in the division thereof, a part of lot No. 8 of the said real estate being the tract of land called "Crotch Hall" was allotted to Mary Cecil wife of Samuel Cecil. This partition made of the said real estate of Nathan Summers was finally ratified by the Court of Chancery, by final decree filed therein. The said part of Lot No. 8 allotted by the Commissioners to Mary Cecil and ratified by the Maryland Court of Chancery contained 126 acres.

Mary Cecil and Henry J. Ball  
to  
Alfred Wilmer Ball.

Liber H. B. No. 4, folio 829. Deed dated June 24, 1871.

617 Recites sale of the land allotted to Mary Cecil as above to Henry J. Ball by Samuel Cecil her husband in the year 1846 for \$567 which has been fully paid, but Ball never got a deed for the same, and is now anxious that the same shall be conveyed to his son Alfred W. Grants unto the Alfred W. Ball the said 126 acres of land called a part of a tract of land called "Crotch Hall."

Alfred W. Ball made the following conveyances of the property devised to him by his father Henry J. Ball and of that conveyed to him by Mary Cecil and Henry J. Ball, as above.

Alfred W. Ball  
to  
Elizabeth Richardson.

Liber J. W. B. No. 7, folio 487. November 3, 1886.

Grants 2 acres of a tract called Crotch Hall.

Alfred W. Ball  
to  
Susanna Mayhew.

Liber J. W. B. No. 5, folio 352. Deed dated October 18, 1885.

Grants 2 acres being a part of a tract called "Addition to Crotch Hall."

Alfred W. Ball  
to  
Walter N. Richardson.

Liber J. W. B. No. 31, folio 675. Deed dated January 15, 1895.

Grants 2 acres of the tract called Crotch Hall."

Alfred W. Ball  
with  
H. W. Coffin and T. W. Isham.

Liber No. 7, folio 157. Mar. 11, '02.

618 Agreement of Sale of 125 acres of land called Crotch Hall, at \$20 per acre, the same lying between the Magruder and the Osborne properties. This agreement was dated March 11, 1902 and was to be of no effect and virtue if the parties failed to pay for the same within 6 months from March 11, 1902, which Mr. Ball says they did not do, so if that be correct and it must be so, the said contract is of no virtue in law.

*Judgements and Other Liens.*

*Judgement.*

I have examined the records of Prince George's County, Maryland for Judgements of record against Alfred W. Ball and find none of record against him.

*Taxes, etc.*

The taxes on the property mentioned in the Caption are all paid except for 1903 which will be due on July 1, 1903.

Title good in Alfred W. Ball at this date June 11, 1903.

J. K. ROBERTS, Att'y.

619 COMPLAINANT'S EXHIBIT A<sup>15</sup>.

Filed March 29, 1905.

SUITE 307, STEWART BUILDING,  
WASHINGTON, D. C., December 17th, 1903.

William E. Ambrose, Esq., att'y at law, 458 Louisiana Ave., City.

DEAR SIR: In reference to the Ball Abstract I have to say—The Abstract does not show with sufficient degree of certainty the location, description, boundaries and areas of the several pieces of land enumerated as being portions of the "supposed 239 acres of land," the title of which is certified to be "good in Alfred W. Ball on June 11th, 1903". The Abstract should show on its face sufficient matters of description, as above named, to render unnecessary further Record search on part of the purchaser at any time—and in that respect is too incomplete to pass proper and satisfactory title.

Assuming that the tracts of land, insufficiently described as Crotch Hall" (100 acres); "the Joint Enlargement of Crotch Hall" (39 acres); "the Child's Portion" (100 acres); and "Moore's Gain" (10 acres, passed by proper deeds, referred to in the Abstract as transfers No. 1, 3 and 4, to Jane Contee Marbury, wife of Wm. Marbury (sub-

ject to life estate of her father, John Reed Magruder) it does not appear from the Abstract whether or not the said Jane Contee  
620 Marbury died seized of said lands or any of them, or whether they were free and unincumbered at her demise, or whether the title to the same was vested in her four heirs after due settlement of her estate, free and unincumbered.

Further it does not appear in transfer No. 5 of said Abstract, deed of William L., John H., and Alexander M. Marbury, grantors, to Jane Contee Penn, born Marbury, whether any or all of the grantors at the time of the execution of said deed were married or single, and that, if married, the wife or wives joined in the deed. No doubt proper affidavits can be procured to cure such defect.

Transfer No. 8 of the Abstract, showing deed of Samuel Kerby to Henry Jackson Ball of 27 acres known as "Child's Portion", does not show whether or not grantor therein was married or single at the time of the execution thereof; and this should be made clear also, with such further steps as may be necessary to shut out any possible dower right.

Transfer No. 13 of the Abstract, regarding tract of land called "a part of Lot 8, known as Crotch Hall", 126 acres, shows conveyance of title to the same to Mary Cecil; but whether in her own right as sole and separate estate, whether in fee or not, does not appear.

Transfer No. 14 of the Abstract, being deed of Mary Cecil and Henry J. Ball, to Alfred W. Ball, recites that Samuel Cecil, husband of Mary Cecil, sold said "Crotch Hall" to Henry J. Ball in 1846,  
621 but never gave a deed to the same. It does not appear in this deed that Samuel Cecil ever had a right to sell or convey "Crotch Hall" to Henry J. Ball; and if he did have such right, it is not shown that he joined with Mary Cecil in said deed to Alfred W. Ball, or that he was demised at time of the execution thereof. Moreover in said deed from Mary Cecil and Henry J. Ball to Alfred W. Ball, the wife of Henry J. Ball did not join, if living—and it appears from transfers No. 9, 10, and 11 of the Abstract that Henry J. Ball both prior and after the date of the deed in question, had a wife living—and this matter should be investigated.

Transfer No. 12, *Will* of Henry Jackson Ball, devises all his property both real and personal which "he now owns or may hereafter acquire" to Alfred W. Ball. But the Abstract does not show of what property he died seized and possessed, if any; or that his estate was settled by due course of law leaving the land in question free and unincumbered to vest in said Alfred W. Ball. Neither does it appear whether or not Henry Jackson Ball at his decease left surviving a wife, and if so whether she is still living or not. A more complete recital of the Records will probably obviate these objections.

Transfer No. 17 of the Abstract shows a certain contract of purchase of a part of the lands in question made by H. W. Coffin and T. W. Isham. This will require a Release from them duly executed waiving any right claim or interest in said land under the same.

622 It is true lapse of years and continuous, undisputed possession, when shown in the Abstract, may cure *some* of the defects of the same, as it now appears; but by affidavits or other-

wise, it seems important that a more complete Abstract of the lands to which title is asserted "to be good in Alfred W. Ball on June 11th, 1903," should be furnished, even up to the date last mentioned.

Of course the death of Alfred W. Ball has complicated matters so that, independent of above objections, it appears impossible to convey good and sufficient title to the lands named in the Agreement without further action, which is awaited under the same. Very truly yours,

A. W. THOMAS.

P. S.—I intended to hand with this the Abstract itself. But as I am having a copy made thereof I will delay turning that in to you until Monday next, when I will send it to you.

A. W. T.

623

COMPLAINANT'S EXHIBIT A<sup>10</sup>.

L. A. Griffith  
to  
Wm. W. Stewart.

This agreement, Made by and between L. A. Griffith, duly authorized Agent and Attorney under a certain power of Attorney from Alfred W. Ball both of Prince George's County, Maryland, parties of the first part, and Wm. W. Stewart of Washington, D. C. of the second part.

Witnesseth that the said W. W. Stewart has paid to the said L. A. Griffith, Agent the sum of Five Hundred Dollars (\$500) part purchase price of the total sum to be paid for a certain tract of land, owned by the said Alfred W. Ball near Meadows Post Office Prince George's County, Md. Containing Two Hundred and forty acres of land more or less, (240) known as a part of a tract of land called "Child's Portion" and a part of a tract of land called "Crotch Hall", same being sold at the rate of \$40. per acre, which said sum of Five Hundred Dollars is hereby acknowledged, to have ben paid to and received by the said L. A. Griffith, Agent, and the said L. A. Griffith as the Agent and duly authorized Attorney of the said Alfred W. Ball, hereby grants bargains and sells, and agrees to convey by proper deed or deeds of conveyance in fee simple free and clear of all liens

and incumbrances of every kind and nature, duly executed  
624 by the said Ball to the said Stewart, the said Two Hundred and forty acres of land, upon further payments and conditions hereinafter named to wit: \* \* \* The balance of one half of the purchase price of the said 240 acres more or less, at the rate of Forty dollars per acre is to be paid to the party of the first part on the 7<sup>th</sup> day of November 1903, and the remaining one half of the total purchase price, is to be divided into five equal payments secured by five promissory mortgage notes, secured by purchase money mortgage upon the said property to be given by the said Stewart and Wife, duly executed and acknowledged, by him and his wife, said notes notes secured thereby, to be payable to the order of the Alfred W. Ball,

21—1744A



for said equal one fifth sums of remaining one half of said purchase price aforesaid, to become due in one, two, three, four, and five years after said November 7, 1903, respectively, bearing interest at the rate of six per cent. (6%) per annum payable semi annually, \* \* \* The said land is the same tract or tracts of land whereon on the said Alfred W. Ball now resided and the same land which was devised him by his father Henry Jackson Ball, by his last will and testament, dated October 1, 1875, recorded in the Will records of Prince Georges County, Maryland in Liber W. A. J. Jr. No. 1, folio 117, etc., excepting however certain tracts of land conveyed by said Alfred W. Ball to certain parties in all about Six acres as appears on the land records of the said County, And in said party of the first part reserves therefrom a certain Burial lot of one acre, intended for

625 Burial purposes conditioned however that if the said Ball should desire to abandon the said burial tract and to remove the remains there interred he shall have paid to him therefor by the said party of the second part the sum of (\$40) Forty dollars in consideration, thereof, said Ball to have access by road leading to said Burial lot at all times.

The said land is to be surveyed and a plat made thereof, and the total purchase price is to be at the rate of Forty Dollars per acre as determined by the said Survey the costs of the said Survey is to be borne equally by the said parties of the first part and the second parts; the said L. A. Griffith and W. W. Stewart each to pay one half of the total survey costs. Proper Deed or Deeds of conveyance and abstracts of title of the said land based upon title search therefor is to be made and by J. K. Roberts Attorney Upper Marlboro Md., showing clear and unencumbered fee simple title, in the said land above mentioned and described, in the said Alfred W. Ball, and one half of the total costs for same not exceeding \$50. is to be borne equally by the parties hereto. \* \* \* In case the the remainder of the first half of the purchase price be not paid on November 7, 1903 then the said \$500 so paid to the said Griffith is to be forfeited and the Contract of sale and conveyance to be null and void, and of no effect in law, otherwise to be and remain in full force \* \* \* the said Ball is to have the right to continue to dwell and live in the house now occupied by him on the said land herein mentioned and to cut and use the necessary fire wood therefrom up to and

626 until April 1st. 1904, and the taxes for the year 1903 are to be paid one half by the said Ball and one half by the said Stewart. \* \* \* The possessory right to all of the said premises on the property mentioned herein is to remain in the said Ball, until the one half payment of the total purchase price herein provided for on November 7th, 1903, has been fully paid and satisfied, to the said L. A. Griffith Agent.

Witness our hands and seals this 5<sup>th</sup> day of June 1903.

L. A. GRIFFITH. [SEAL.]  
WM. W. STEWART. [SEAL.]

Test as to L. A. Griffith:  
J. K. ROBERTS.

Witness for Wm. W. Stewart:  
A. W. THOMAS.

STATE OF MARYLAND,

*Prince George's County, To wit:*

I hereby certify that on this 5<sup>th</sup> day of June in the year 1903 before me the subscriber a Justice of the Peace, of the said State in and for the said County, personally appeared, Lewis A. Griffith Attorney and Agent of the said Alfred W. Ball under Power of attorney duly executed, and he did acknowledge the said Agreement herein set forth to be his act and deed.

J. ALFRED RIDGELY, J. P.

Know all men by these Presents, that I, A. W. Ball of Prince George's County in the State of Maryland, in consideration of  
627 the sum of one *One* dollar, current money and other valuable considerations to me moving do hereby constitute and appoint Dr. L. A. Griffith, of Upper Marlboro in said State and County to be my agent and attorney for me, and in my name to negotiate for the sale and transfer of my real estate in Prince George's County, near Meadows P. O. wherein I now reside, said real estate containing Two Hundred and forty acres (240) of land. And that one acre known as the burying ground on the said property, is to be reserved forever to me and my heirs and that I am to have the use of the houses on the said property and the necessary wood until January 1, 1904.

Witness my hand and seal this 4<sup>th</sup> day of June 1903.

(Signed)

ALFRED W. BALL. [SEAL.]

STATE OF MARYLAND, *Prince George's County, To wit:*

I hereby certify that on this 4<sup>th</sup> day of June 1903, before me the subscriber a Justice of the Peace of the said State in and for the said County, personally appeared, A. W. Ball, being well known to me as the person who executed the foregoing power of attorney, and he acknowledged the same to be his act and deed.

J. ALFRED RIDGELY, J. P.

STATE OF MARYLAND, *Prince Geo. Co., ss:*

I hereby certify that on this 5<sup>th</sup> day of June 1903, before me, the subscriber, a Justice of the Peace, of the said State, in and for  
628 the said County, personally appeared Dr. L. A. Griffith and made oath in due form of law, that the above Power of Attorney is true and genuine.

J. ALFRED RIDGELY, J. P.

Enrolled, July 2d, 1903, in Liber No. 13, Folio 401, etc., One of the Land Records of Prince George's County, Maryland.

STATE OF MARYLAND, *Prince George's County, Set:*

I Hereby Certify, That the foregoing is a true copy from Liber No. 13, Folio 401 *et seq.*, One of the Land Records of said County. I further certify, that the original Agreement was received for record July 2d, 1903, from Wm. W. Stewart and the recording fees therefor

paid by him, and after record the said original Agreement was re-mitted to the said Wm. W. Stewart, Washington, D. C., June 29, 1904.

In testimony whereof, I hereto set my hand and affix the seal of the Circuit Court for the State and County aforesaid, this 14th day of September, A. D. 1904.

[SEAL.]

BENJ. D. STEPHEN, *Clerk.*

629

*Authentication of Record.*

Clerk's Office, Circuit Court for Prince George's County, Maryland.

I, Benj. D. Stephen, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of record in said office.

Witness my hand and the seal of said Court this 14th day of September 1904.

[SEAL.]

BENJ. D. STEPHEN, *Clerk.*

I, Geo. C. Merrick, Judge of said court, do certify the foregoing attestation by Benj. D. Stephen, clerk of the said court, to be in due form, and by the proper officer.

Witness my hand and seal this 14th day of September 1904.

GEO. C. MERRICK. [SEAL.]

I, Benj. D. Stephen, clerk of said court, hereby certify that Hon. Geo. C. Merrick, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, a Judge of said Court, duly commissioned and qualified.

630 Witness my hand and the seal of said Court this 14th day of September 1904.

[SEAL.]

BENJ. D. STEPHEN, *Clerk.*

*Memorandum.*

For Complainant's Exhibit A<sup>17</sup>, see Designation for Transcript, at page 733 of this Record.

631

COMPLAINANT'S EXHIBIT A<sup>18</sup>.

STATE OF MARYLAND, *Prince George's County, set:*

I Hereby Certify, That J. Alfred Ridgely was appointed a Justice of the Peace of the State of Maryland, in and for Prince George's County, duly commissioned, and qualified as such on the 2nd day of May, 1902, and served a full term of two years from said date, and was reappointed to the same office, and duly qualified as such Justice of the Peace on the 6th day of May, 1904, for a second term, which will expire on the 1st Monday in May, 1906. I further certify, that the said J. Alfred Ridgely has been a Justice of the Peace continuously since May 2nd, 1902.

In testimony whereof, I hereto set my hand and affix the seal of the Circuit Court for the State and County aforesaid, this 17th day of September, A. D. 1904.

[SEAL.]

BENJ. D. STEPHEN, *Clerk.*

I, Geo. C. Merrick Judge of said court, do certify the foregoing attestation by Benj. D. Stephen, clerk of the said court, to be in due form, and by the proper officer.

Witness my hand and seal this 17th day of September, 1904.

GEO. C. MERRICK. [SEAL.]

632 I, Benj. D. Stephen, clerk of said court, hereby certify that Hon. Geo. C. Merrick, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, a Judge of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 17th day of September, 1904.

[SEAL.]

BENJ. D. STEPHEN, *Clerk.*

*Memorandum.*

Exhibit W. W. S. No. 19, was offered by Complainant in Defendant's Testimony. See Stipulation of Counsel, page 730 of this Record.

633 EXHIBIT W. W. S. No. 20.

Offered by Complainant's Counsel in Defendant's Testimony.

This agreement, made this Fifteenth day of April, 1902, by and between William H. Hinchman and Melissia C. Hinchman, his wife, parties of the first part, and William W. Stewart party of the second part.

Witnesseth, That, Whereas the parties of the first part are seized in fee of a certain piece or parcel of ground and premises situate in Prince George's County, State of Maryland, and described as follows, to wit, Lot numbered Two (2) of the plat of a survey made by William J. Latimer, Surveyor for said Prince George's County, in 1877, and filed in Equity Cause No. 1097 in the Circuit Court of said Prince George's County September 14, 1897, being the subdivision of the real estate of the late Charles F. Calvert, the same being called "Belle Chance," the said lot Two (2) beginning at a stake 188 perches on the second line of the whole tract and with the last line (reverted) of lot Three (3) South 81 degrees West 156-4/5 perches to the proposed road to Forrestville, thence with said road North 93 3/4 degrees East 93-1/5 perches, thence leaving the road North 85 3/4 degrees East 90-16/25 perches, South 33 1/4 degrees East 89 1/4 perches to the beginning, containing Sixty-four (64) Acres according to said survey; that the parties of the first part are

desirous that the said party of the second part shall have a  
 634 negotiable option of purchase upon said property for the sum  
 of Thirty-two hundred (\$3200) dollars.

Now, therefore, in consideration of the premises and the sum of  
 One hundred (\$100) dollars paid in hand by the party of the second  
 part, the receipt of which is hereby acknowledged, and for the  
 further consideration that the said party of the second part hereby  
 agrees to pay to the said party of the first part the further sum of  
 One hundred (\$100) dollars in ninety days from the first day of  
 June date of this agreement, the said parties of the first part and  
 their heirs and legal representatives hereby agree to convey by deed  
 in fee, free of incumbrance, the aforesaid mentioned piece of land  
 to the party of the second part, his legal representatives and assigns,  
 or to such other persons as the said party of the second part shall  
 direct, the said parcel of ground and premises upon payment to the  
 parties of the first part of the purchase price of the property, Thirty-  
 two hundred (\$3200) dollars, less the said sums mentioned above;  
 that the party of the second part shall have five months from the  
 date of First day of June to effect the purchase or sale of said prop-  
 erty at the price hereinbefore stated; the purchase price of Thirty-  
 two hundred (\$3200) dollars to be fully paid within said period in  
 manner above provided.

It is further agreed by the parties hereto that upon failure of the  
 party of the second part to pay the aforesaid One hundred (\$100)  
 dollars agreed to be paid in ninety days from this date, the  
 635 sum of One hundred (\$100) dollars this day paid shall be  
 forfeited to the parties of the first part, and upon failure  
 to make full payment of the purchase price of \$3200 in the manner  
 herein set forth in five months from this date the said Two hundred  
 (\$200) dollars provided to be paid shall be forfeited to the parties  
 of the first part and this agreement shall in all things be null and  
 void.

The parties of the first part are to retain possession of the afore-  
 said property until full payment of the purchase money of Thirty-  
 two hundred (\$3200) dollars.

In witness whereof the parties of the 1st and 2nd parts hereunto  
 set their hands and seals the day and year first above written.

WM. H. HINCHMAN. [SEAL.]  
 MELISSIA C. HINCHMAN. [SEAL.]  
 WM. W. STEWART. [SEAL.]

Attest:

[SEAL] WILLIAM JACOBSEN,  
*Notary Public, Hudson Co., N. J., for*  
*William H. and Melissa C. Hinchman.*

636 DEFENDANT'S EXHIBIT "A. W. T. No. 4," Previously Marked  
 "E. L. W." for Identification.

This agreement made by and between L. A. Griffith, duly author-  
 ized Agent and Attorney under a certain power of Attorney from Al-  
 fred W. Ball both of Prince George's County, Maryland, parties of

the first part, and Wm. W. Stewart, of Washington City, D. C. of the second part,

Witnesseth that the said W. W. Stewart has paid to the said L. A. Griffith, Agent the sum of five hundred Dollars, (\$500) part purchase price of the total sum to be paid for a certain tract of land, owned by the said Alfred W. Ball near Meadows Post Office Prince George's County, Md. containing Two hundred and forty acres of land more or less, (240) known as a part of a tract of land called "Childs' Portion" and a part of a tract of land called "Crotch Hall", same being sold at the rate of \$40 per acre, which said sum of Five hundred Dollars is hereby acknowledged, to have been paid to and received by the said L. A. Griffith Agent, and the said L. A. Griffith as the Agent and duly authorized Attorney of the said Alfred W. Ball, hereby grants bargains and sells, and agrees to convey by proper deed or deeds of conveyance in fee simple free and clear of all liens and incumbrances of every kind and nature, duly executed by the said Ball to the said Stewart, the said Two hundred and forty acres of land, upon further payments and conditions hereinafter named to wit,

The balance of one half of the purchase price of the said 240 acres, more or less at the rate of Forty dollars per acre is to be paid  
637 to the party of the first part on the 7th day of November 1903 and the remaining one half of the total purchase price, is to be divided into five equal payments, secured by five promissory mortgage notes, secured by purchase money mortgage upon the said property to be given by said Stewart and wife, duly executed and acknowledged, by him and his wife, said notes secured thereby, to be payable to the order of the Alfred W. Ball, for said equal one fifth sums of remaining one half of said purchase price, aforesaid to become due in one, two three four and five years, after said November 7, 1903, respectively bearing interest at the rate of six per cent. (6%) per annum payable semi annually.

The said land is the same tract or tracts of land whereon the said Alfred W. Ball now resides and the same land which was devised him by his father Henry Jackson Ball, by his last Will and Testament dated October 1, 1875, recorded in the Will records of Prince George's County, Maryland in Liber W. A. J. Jr. No. 1 folio 117 etc. excepting however certain tracts of land conveyed by said Alfred W. Ball to certain parties in all about Six acres as appears on the land records of the said County.

And the said party of the first part reserves therefrom a certain Burial lot of one acre, intended for Burial purposes conditioned however that if the said Ball should desire to abandon the said burial tract and to remove the remains there interred he shall have paid to him therefor by the said party of the second part the sum of  
638 \$40 Forty dollars in consideration, thereof, said Ball to have access by road leading to said Burial lot at all times.

The said land is to be surveyed and a plat made thereof, and the total purchase price is to be at the rate of Forty Dollars per acre as determined by the said survey the costs of the said survey is to be borne equally by the said parties of the first and the second parts, the



said L. A. Griffith and W. W. Stewart each to pay one half of the total survey costs. Proper deed or deeds of conveyance and Abstracts of title of the said land based upon title search therefor is to be made and J. K. Roberts Attorney Upper Marlboro Md., showing clear and unincumbered fee simple title, in the said land above mentioned and described, in the said Alfred W. Ball and one half of the total costs for same not exceeding \$50 is to be borne equally by the parties hereto.

In case the *the* remainder of the first half of the purchase price be not paid on November 7, 1903, then the said \$500 so paid to the said Griffith, is to be forfeited and the Contract of sale and conveyance to be null, and void and of no effect in law otherwise to be and remain in full force. the said Ball is to have the right to continue to dwell and live in the house now occupied by him on the said land herein mentioned, and to cut and use the necessary fire wood therefrom up to and until April 1st 1904, and the taxes for the year 1903, are to be paid one half by the said Ball and one half, by the said Stewart.

The possessory right to all of the said premises on the property mentioned herein is to remain in the said Ball, until the one half payment of the total purchase price herein provided for on November 7th 1903 has been fully paid and satisfied, to the said L. A. Griffith, Agent.

Witness our hands and seals this 5th day of June 1903.

L. A. GRIFFITH, *Agent*. [SEAL.]  
WM. W. STEWART. [SEAL.]

Test to:

L. A. GRIFFITH.  
J. K. ROBERTS.

Witness for:

WM. W. STEWART.  
A. W. THOMAS.

STATE OF MARYLAND, *Prince George's County, To wit:*

I hereby certify that on this 5th day of June in the year 1903 before me the subscriber a Justice of the Peace of the said State in and for the said County personally appeared Lewis A. Griffith Attorney and Agent of the said Alfred W. Ball under Power of Attorney duly executed, and he did acknowledge the said Agreement herein set forth to be his act and deed.

J. ALFRED RIDGELY, *J. P.*

640 Know all men by these presents that I, A. W. Ball of Prince George's County in the State of Maryland, in consideration of the sum of One dollar, current money and other valuable considerations to me moving do hereby constitute and appoint Dr. L. A. Griffith, of Upper Marlboro in said State and County to be my agent and Attorney for me and in my name to negotiate for the sale and transfer of my real estate in Prince George's County, near Meadows P. O., whereon I now reside said real estate containing Two hundred

and forty acres (240) of land. And that one acre known as the burying ground on the said property, is to be reserved forever to me and my heirs and that I am to have the use of the houses on the said property and the necessary wood until January 1, 1904., Witness my hand and seal this 4th day of June 1903.

(Signed)

ALFRED W. BALL. [SEAL.]

STATE OF MARYLAND, *Prince George's County, To wit:*

I hereby certify that on this 4th day of June 1903 before me the subscriber a Justice of the Peace of the said State in and for the said County, personally appeared A. W. Ball, being well known to me as the person who executed the foregoing power of Attorney, and he acknowledged the same to be his act and deed.,

J. ALFRED RIDGELEY, J. P.

641 STATE OF MARYLAND, *Prince Geo. Co., ss:*

I hereby certify that on the 5th day of June 1903 before me the subscriber a Justice of the Peace of the said State in and for the said county personally appeared Dr. L. A. Griffith & made oath in due form of law that the above Power of Attorney is true & genuine.

J. ALFRED RIDGELY, J. P.

(Endorsed:) Received for record July 2nd 1900 and recorded in Liber No. 13 fol. 401, one of the Land Records for Pr. Geo. Co., Md. Jas. B. Belt, clerk.

642 *Decree for Specific Performance, &c.*

Filed February 21, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24484, Doc. 54.

LEWIS A. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

This cause coming on to be heard on the bill and answer, the exhibits, the pleadings, the testimony filed and the arguments of counsel, both parties having been fully heard, the Court this 21st day of February A. D. 1906, doth declare that the agreement in the complainant's bill mentioned dated the 5th day of June, 1903, ought to be specifically performed and carried into execution and the Court doth decree the same accordingly. And it is ordered that, upon the complainant as executor of the estate of Alfred W. Ball, deceased, late of Prince George's County, in the State of Maryland, duly executing and tendering to defendant a proper conveyance in fee simple, of the estate described in the complainant's bill of complaint and accompanying exhibits to the defendant, such conveyance to be set-

tled by this court in case the parties differ, the defendant pay to the complainant the sum of Forty (\$40) Dollars per acre for the land described in the conveyance to be executed, the quantity of said  
643 land to be computed on the basis of the survey made by R. E.

Latimer and filed as an exhibit in this cause, namely, Two hundred eighty-eight and two-thirds (288 2-3) acres, and it is ordered that the defendant on execution of the aforesaid conveyance forthwith pay to the complainant the sum of Seven thousand five hundred and eighty-two and fifty hundredths (\$7,582.50) Dollars, (being one-half of the purchase price of the said described tract of land less the sum of Five hundred (\$500.00) Dollars heretofore paid on account thereof and the amount of two overdue annual notes for one-fifth each of the balance of one-half of the agreed purchase price in the contract between the parties hereto,) with interest at the rate of Six (6%) per cent. per annum from the 15th day of December, 1903, and that the defendant at the time of payment of the balance of the purchase price aforesaid execute and deliver to the complainant as executor of the estate of Alfred W. Ball, deceased, three equal promissory notes for the remainder of the purchase price, said notes to run for three, four and five years from the 15th day of December, 1903, with interest at the rate of Six (6%) per cent. per annum until paid, said notes to be secured by a purchase money mortgage, duly executed by the defendant and delivered to the complainant, on the land described in the aforesaid conveyance from complainant to defendant, said purchase money mortgage to give complainant the right, on default in the payment of said notes or any or either of them, to enter on and sell by public sale after due advertisement said estate described in the aforesaid deed of conveyance and the purchase  
644 money mortgage and to hold defendant for any deficit, if there be a deficit, after paying costs and expenses, from the amount due and payable from defendant to complainant under said purchase money mortgage.

It is further ordered, adjudged and decreed by the court that the defendant shall pay to the complainant all taxes due and payable since said 15th day of December, 1903, on the land described in the conveyance herein ordered to be executed and further shall pay to complainant on being given a proper receipt therefore, Twelve and fifty hundredths (\$12.50) Dollars, being defendant's half of the fee for title search agreed to be paid to J. H. Roberts, attorney of Upper Marlboro, Md., and Twenty-two and fifty hundredths (\$22.50) Dollars, being one-half of the fee agreed to be paid by defendant for the survey made by surveyor Latimer of the estate in controversy.

It is further adjudged, ordered and decreed that the defendant shall pay to the complainant costs of suit and that execution therefor shall issue in favor of complainant.

In the event that defendant on tender to him by complainant of a proper and duly executed conveyance shall not comply with the terms of this decree within thirty (30) days from the date hereof it is further adjudged, ordered and decreed that a money decree shall be entered up by the Clerk of the Court against defendant in favor of complainant in the sum of Seven thousand five hundred eighty-

two and fifty hundredths (\$7,582.50) Dollars with interest thereon at the rate of Six (6%) per cent. per annum from December 15, 1903, and the additional sum of Thirty-five (\$35.00) Dollars and the costs of this suit and that execution therefor shall issue as at 645 law. That Claude D. Thomas be and he hereby is appointed trustee for defendant to receive from said complainant the aforesaid conveyance from complainant and said Claude D. Thomas hereby is authorized, empowered and directed as trustee for the defendant William W. Stewart to execute and deliver to complainant for, in behalf of and in the name of said defendant three promissory notes each in the sum of One thousand one hundred fifty-four and sixty-four hundredths (\$1,154.64) Dollars at three, four and five years from December 15, 1903, with interest thereon at the rate of Six (6%) per cent. per annum payable semi-annually until paid; to execute and deliver to complainant as security for said promissory notes a proper purchase money mortgage secured on the property described in complainant's bill.

It is further adjudged and ordered by the Court that jurisdiction of this cause be and the same hereby is retained by the Court to await compliance by the defendant with this decree or for such further order by the Court as may seem necessary or proper should said defendant fail to comply with this decree or any part thereof within thirty (30) days from the date hereof.

WENDELL P. STAFFORD, *Justice.*

*Order for Appearance.*

Filed February 27, 1906.

In the Supreme Court of the District of Columbia the 27th Day of February, 1906.

Equity. No. 24484, Docket No. —.

LEWIS A. GRIFFITH

*vs.*

WILLIAM W. STEWART.

The Clerk of said Court will enter my appearance for defendant in the above entitled cause.

JAMES B. ARCHER, JR., *Solicitor.*

646

*Deed in Fee.*

This indenture made this — day of March in the year One thousand nine hundred and six between Lewis A. Griffith of Prince George's County in the State of Maryland, executor of Alfred Wilmer Ball, late of Prince George's County Maryland, deceased of the first part and William W. Stewart of Washington City in the District of Columbia party of the second part.

Whereas, a certain Alfred Ball late of the said County and state as aforesaid on the 4th. day of June, in the year 1903 by his power of attorney duly executed, acknowledged and recorded among the land records of Prince George's County did constitute and appoint as his true and lawful attorney for him and in his name to negotiate the sale of the real estate hereinafter described and the said Lewis A. Griffith on the 5th., day of June 1903, did negotiate the sale of the same with the said party of the second part, at and for the sum of Forty dollars per acre and executed on behalf of the said Alfred Wilmer Ball a stipulation or agreement in writing with the said party of the second part which said agreement is under seal signed by the said Lewis A. Griffith as attorney aforesaid and by the said William W. Stewart, the same being of record among the land records of Prince George's County Maryland as of record will appear by reference to the same.

[Written across face of this page:]

Acceptance Declined March 10 1906 by James B. Archer, jr., Att'y for Wm. M. Stewart in presence of Wm. M. Stewart. Chas. H. Merillat, Att'y for Lewis A. Griffith.

647 And whereas, the said Alfred W. Ball before the day on which the proper deeds of conveyance of the said property and real estate,—confirm to the said Stewart party of the second part, died and departed this life, having died November 6th., 1903, and the completion of the said agreement of sale was to be carried out and completed on November 7th, 1903, said Alfred W. Ball had in the meantime executed his last will and testament in due legal form and formality in which he nominated and appointed the said Dr. L. A. Griffith to be the sole executor of his last will and testament and the said Lewis A. Griffith has duly probated the said will in the office of the register of Wills of Prince George's County Maryland and the same is of record in the said office.

And whereas the said Lewis A. Griffith after duly qualifying as the legal Executor of the last will and testament of the said Alfred W. Ball deceased did on the 17th day of November in the year Nineteen hundred and three (1903), aforesaid file his Petition in the Orphans' Court of Prince George's County, in which he recited the said sale by him as Attorney, for the said Alfred W. Ball, of the said property hereinafter described and further reciting that the said Alfred W. Ball had departed this life testate, leaving him the said Lewis A. Griffith as Executor of his last will and testament without the said Alfred W. Ball having conveyed the said property to the said William W. Stewart, party of the second part and praying the said Court to pass an order authorizing him as Executor of

648 the said Alfred W. Ball to execute acknowledge and deliver to the said William W. Stewart party of the second part, a deed of conveyance of the said property being the property hereinafter mentioned and described.

And whereas the said Court, did on the 17th day of November in the year Nineteen hundred and three (1903) by its order passed on

the said date authorize direct and empower the said Lewis A. Griffith as said Executor to convey the said property to the said William W. Stewart party of the second part upon the payment of the residue of the unpaid instalments of purchase money as agreed upon in the said agreement under seal and the securing the payment of the deferred portions of instalments of the said purchase money to wit: the one half part of the total purchase money for the said land at the sum of Forty dollars per acre by the execution of the five promissory notes of the said William W. Stewart drawn to the order of the— L. A. Griffith as Executor of the said Alfred W. Ball, deceased said notes to be properly secured by a purchase money mortgage on the said land hereinafter mentioned and described and the said Lewis A. Griffith did comply with the said order of the Court and tendered himself as said Executor aforesaid to the said William W. Stewart, as ready and willing to execute said deed to said Stewart of the said property hereinafter mentioned but that said Stewart refused to receive the said deed or to comply with the said agreement under seal or to execute the said purchase money mortgage securing the said five *five* promissory notes as aforesaid being the deferred portion of the *of the* said purchase money for said hereinafter described land. And whereas by proceedings instituted by the said Lewis A. Griffith as Executor of the said Alfred W. Ball, deceased against the said William W. Stewart in the Supreme Court of the District of Columbia sitting in Equity, being Equity cause in said Court Numbered 24484, it was decreed that the said Lewis A. Griffith as Executor of the said Alfred W. Ball was entitled to the relief prayed for in the Bill of Complaint filed in said cause, and further that the said Stewart upon the execution of the deed of conveyance of the said property hereinafter mentioned by the said Lewis A. Griffith Executor should pay to him the said Lewis A. Griffith Executor of Alfred W. Ball, the sum of Seven thousand five hundred and eighty two dollars and fifty cents (\$7582.50) with interest at the rate of six per cent. per annum from the 15th day of December 1903, and further that *that* the said Defendant William W. Stewart at the time of the payment of the purchase price aforesaid as above set forth execute and deliver to the said Lewis A. Griffith Executor as aforesaid, three equal promissory notes for the remainder of the purchase price of said land said notes to run for three, four, and five years from December 15, 1903, with interest at the rate of six per cent. per annum until paid, said notes to be properly secured by a purchase money mortgage on the said land hereinafter mentioned and described, to be executed by the said Stewart and delivered to the said Lewis A. Griffith as Executor as aforesaid.

And whereas the said Lewis A. Griffith as Executor of the said Alfred W. Ball, being anxious and desirous to comply with the said decree of the said Court in every respect and in order further to carry out and perform the said Contract under seal hereinbefore mentioned is willing to execute these presents.

Now this deed witnesseth, that the said Lewis A. Griffith as Executor of the said Alfred W. Ball, deceased, party of the first part, for and in



consideration of the above recited premises and the receipt by him as such Executor from the said William W. Stewart party of the second part of the said sum of Seven thousand five hundred and eighty two dollars and fifty cents (\$7582.50) as set forth in said decree, and the interest thereon from December 15 1903 the receipt of which is acknowledged, and the further consideration of the receipt by said Griffith as said Executor from the said Stewart of three certain promissory notes of the said Stewart executed by him as required by the said decree as hereinbefore set forth said notes to run for three, four and five years with interest thereon from December 15, 1903, and payable to the order of the—Lewis A. Griffith as Executor of the said Alfred W. Ball, the said Lewis A. Griffith Executor of the Last Will and testament of Alfred W. Ball, deceased, doth grant bargain and sell release confirm and convey unto the said William W. Stewart, party of the second part, his heirs and assigns in fee simple all the following described real estate situated near Meadows Post Office in Surratts District, Prince George's County, Maryland, and described by metes and bounds courses and distances as per plat of \* \* \* Latimer Surveyor, made in December 1903, and being parts of several tracts of land called "Child's Portion", part of "Crotch Hall" and "Addition to Crotch Hall" or by whatsoever name or names the same may be called "Beginning for the same at a stake on the North side of the main road leading from Camp Springs to Centerville (Meadows P. O.) said stake standing S. One degree East thirteen perches from a stone the beginning of Child's Portion and with a part of the first line thereof (1) South 1 degree East 77 and  $\frac{1}{2}$  perches, to a stone and Oak tree at the North East corner of Jesse Alfred Osborne's estate, and with the said estate (2) S. 74 and  $\frac{1}{2}$  degrees, West 121 and 2-5 perches to a stone (3) South 12 degrees East 63 and 9-10 perches to a stone at the North East corner of John A. Fraser's estate and then (4) S. 88 and  $\frac{3}{4}$  degs., W. 102 Ps. to a stone at the N. E. Corner of Col. Magruder's estate and (5) S. 40 and  $\frac{3}{4}$  degrees, West 20 and  $\frac{1}{4}$  perches to a stone, (6) North 51 degrees West 78 and 4-5 perches to a Cedar tree (7) N. 3 and  $\frac{1}{2}$  degs. W. 96 and  $\frac{3}{4}$  perches, to a Pebblestone (8) North 64 and  $\frac{5}{8}$  degs. West 17 and 4-5 perches to a stone on the West side of a private road the South east corner of George Mayhew's estate, and with the said estate along the western line of the said private road, (9) N. 30 and  $\frac{3}{4}$  degrees East 10 ps., (10) North 16 and  $\frac{3}{4}$  degrees, East 8 Ps., (11) N. 9 and  $\frac{1}{4}$  degs., East 8 Ps., (12) N.  $\frac{3}{4}$  degs., W. 3 and  $\frac{1}{5}$  perches, (13) North 19 degrees W. 16 perches, (14) North 8 and  $\frac{1}{4}$  degrees W. 10 and 9/25 Ps. to the center of the Main road leading from Camp Springs to Centerville and with the said road (15) N. 73 and  $\frac{3}{4}$  degs., E. 25 and 4/5 Ps., to a stone on the North side of the bounds of Charles F. Calvert's Estate (16) North 84 and  $\frac{3}{4}$  degs., E. 18 and  $\frac{1}{5}$  perches, to an oak tree and the North west corner of Susanna Mayhew's two acre lot, thence leaving the said road and running with the said lot (17) S. 14 and  $\frac{1}{4}$  degs. west 27 and  $\frac{1}{4}$  perches (18) North 84 and  $\frac{3}{4}$  degs., East 12 and 17/25 perches, (19) North 14 and  $\frac{1}{4}$  degs., East 27 and  $\frac{1}{4}$  to the center of the aforesaid Main road, (20) North 84 and  $\frac{3}{4}$  degs.,

E. 11 and  $\frac{3}{5}$  perches, (21) South 87 and  $\frac{3}{4}$  degrees, E. 28 and  $\frac{2}{5}$  perches (22) North 89 degs., East 2 and  $\frac{2}{3}$  perches to the North west corner of Albert Richardson's lot, then leaving said road and running with the said lot (23) South S. 18 and  $\frac{3}{4}$  degs., W. 27 and  $\frac{1}{4}$  perches, to a stone (Note at 1 and  $\frac{1}{5}$  perches a stone on south of said road) (24) N. 89 degs. East 25 and  $\frac{9}{25}$  perches, to the South-East corner of James Richardson's lot and with the east lines thereof (25) North 18 and  $\frac{3}{4}$  degs. E. 27 and  $\frac{1}{4}$  perches to a stone and oak tree on the North side of the aforesaid Main road, (26) S. 81 and  $\frac{3}{8}$  degrees E. 23 and  $\frac{18}{25}$  perches (27) N. 86 and  $\frac{3}{4}$  degs., E. 34 Ps., (28) N. 79 and  $\frac{3}{4}$  degrees E. 18 Ps. (29) N. 73 and  $\frac{3}{4}$  degs. East 20 Ps., (30) S. S. 74 and  $\frac{1}{4}$  degs., E. 50 and  $\frac{1}{2}$  perches, (31) South 62 and  $\frac{3}{4}$  degs. East 37 perches to the beginning containing Two hundred and eighty eight and two-thirds Acres of land as surveyed.

Being the same land devised to Alfred W. Ball by the Last will and testament of Henry J. Ball, his father said last will and testament bearing date of October 1, 1875 and probated and recorded in the Will Record books of Prince George's County, Maryland, in Liber W. A. J. Jr. Number one (1) folio 117, less certain tracts of 653 land conveyed by said Alfred W. Ball to certain parties in all about six acres as appears on the land records of the said county.

Together with the buildings and improvements thereupon made or being and all the rights, ways, waters privileges appurtenances and advantages to the same belonging or in anywise appertaining.

To have and to hold the same unto the proper use and benefit of the said William W. Stewart, party of the second part his heirs and assigns forever free clear and forever discharged of all claims of demands of the said Alfred W. Ball or of his estate or of those claiming or to claim the same by, from under or through him in any way whatsoever.

In Testimony whereof Witness the hand and seal of the said Lewis A. Griffith as Executor of the Last Will and testament of the said Alfred W. Ball, deceased.

LEWIS A. GRIFFITH, [SEAL.]  
*Executor of the Last Will and Testament of*  
*Alfred W. Ball, Deceased.*

Attest:—

CLAUDE D. THOMAS.

[Written across the face:] Acceptance Declined March 10, 1906.  
 By James B. Archer Jr. Att'y for Wm. M. Stewart in presence of  
 Wm. M. Stewart. Chas. H. Merillat Att'y for Lewis A. Griffith.

DISTRICT OF COLUMBIA, *To wit:*

I hereby certify that on this 10th day of March in the year 1906 before me the subscriber a Notary Public of the said District personally appeared Dr. Lewis A. Griffith, Executor of the Last Will and

654 testament of Alfred W. Ball, deceased, the party of the first part to the within and annexed deed of conveyance and he did acknowledge the same before me to be his said act and deed as Executor of the last will and testament of the said Alfred W. Ball, deceased.

Witness my hand and Notarial seal.

[SEAL.]

CLAUDE D. THOMAS,  
Notary Public, D. C.

This Deed prepared by Joseph K. Roberts attorney at Law, Upper Marlboro Maryland.

655

*This Mortgage*

Made this — day of — in the year one thousand nine hundred and — by and between William W. Stewart and Blanch Stewart, his wife, of Washington City, District of Columbia Mortgagors, parties of the first part, and Dr. Lewis A. Griffith, Executor of the last will and testament of Alfred Wilmer Ball, Late of Prince George's County, Maryland of said Prince George's Co., Maryland, party of the second part:

Whereas, the said William W. Stewart by virtue of a certain agreement executed by him with said Lewis A. Griffith attorney under Power of Attorney from Alfred W. Ball dated June 5, 1903 and recorded among the land records of Prince George's County Maryland (the said Alfred W. Ball since the execution of the said power of attorney and since the said agreement was executed having departed this life leaving a will in which he left the said Lewis A. Griffith as his Executor the said Lewis A. Griffith under said will having duly qualified as Executor of the same) stands justly indebted unto the said Lewis A. Griffith as Executor aforesaid in the full and just sum of Three thousand Four hundred and sixty-three dollars and eighty cents with interest on said sum from the 15th., day of December 1903 being the balance of deferred payment for the land hereinafter described and being so indebted in pursuance of said written agreement has made and passed to the said Dr. Lewis A. Griffith Executor as aforesaid his three certain promissory notes drawn payable  
656 to the order of the said Lewis A. Griffith Executor as aforesaid each note being dated December 15th., 1903 and being for the sum of Eleven Hundred and Fifty-four Dollars and Sixty cents (\$1154.60) and payable in Three (3) Four (4) and Five (5) years from date with interest payable annually, and wishing to better secure the punctual payment of said notes by the execution of this Mortgage, which was a condition precedent to the making of said notes.

Now, this mortgage witnesseth, that in consideration of the premises, and of the sum of Ten Dollars the said parties of the first part do — grant unto the said party of the second part, in fee simple, all those pieces or parcels of ground, situate, lying and being in the Ninth Election District of Prince George's County, State of Maryland, and described as follows, to wit: all those tracts of land called

"Child's Portion" Crotch Hall" of which a certain Alfred Wilmer Ball died seized and possessed in November 6th., 1903, and fully described by metes and bounds course and distance in a deed from Dr. Lewis A. Griffith Executor of Alfred Wilmer Ball's last Will and Testament bearing even date herewith, and intended for record among the land records of Prince George's County Maryland, prior to this mortgage the said land having been Surveyed out and Platted by William J. Latimer County Surveyor of Prince George's County, in December 1903, the same as per Survey and Plat and by said deed of Conveyance above mentioned containing Two Hundred and Eighty eight and Two-Thirds (288 and 2/3rds) acres of land.

Together with the buildings and improvements thereon,  
657 and the rights, roads, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To have and to hold the aforesaid parcel of ground and premises unto and to the proper use and benefit of the party of the second part, his successors, heirs and assigns forever.

Provided, that if the said William W. Stewart his heirs, executors, administrators, or assigns, shall pay or cause to be paid the aforesaid notes according to the tenor thereof, and shall perform all the covenants herein on his or their part to be performed, then this Mortgage shall be void.

And it is agreed that, until default be made in the premises, the parties of the first part shall possess the aforesaid property, upon paying, in the meantime, all taxes and assessments, public dues and charges of every kind, levied or assessed, or to be levied or assessed, on said hereby mortgaged property; which taxes, assessments, public dues, charges, mortgage debt and interest the said William W. Stewart, for himself, for h- — and for his heirs, executors, administrators and assigns, do — hereby covenant to pay when legally demandable. But if default be made in payment of said money or the interest thereon to accrue, or any part of either one of them, at the time limited for the payment of the same, or in any agreement, covenant or condition of this Mortgage, then the entire mortgage debt shall be deemed due and demandable; and it shall be lawful

for the said Dr. Lewis A. Griffith Executor of Alfred W.  
658 Ball his successors heirs and assigns or his or their attorney or agent, at any time after such default, to sell the property hereby mortgaged, or so much thereof as may be necessary to satisfy and pay said debt, interest, and all costs incurred in making such sale, and to grant and convey the said property to the purchaser or purchasers thereof, his, her, or their heirs or assigns; and which sale shall be made in manner following, viz: upon giving twenty days' notice of the time, place, manner and terms of sale in some newspaper printed in Prince George's County, Maryland, which time, place, manner and terms of sale shall be fixed by the party or parties selling; and in the event of a sale of said property under the powers hereby granted, the proceeds arising from such sale to apply, First, to the payment of all expenses incident to such sale, including all taxes assessed on the property hereby mortgaged, overdue and paid by the mortgagee or holder of this Mortgage, and

commissions to the party or parties making sale of said property equal to the commissions allowed trustees for making sale of property by virtue of a decree of the Circuit Court for Prince George's County, sitting in Equity; Secondly, to the payment of all claims of the said mortgagee his personal representatives and assigns under this Mortgage, whether the same shall have then matured or not, and the surplus, if any, shall be paid to the said mortgagors his or their personal representatives or assigns, or to whoever may be entitled to the same.

And it is further agreed, that if the property aforesaid shall be advertised for sale and not sold under the provisions of this  
659 Mortgage, then the party or parties rightfully so advertising the same shall be entitled to one-half the commission above provided, computed on the amount of the debt hereby secured and remaining unpaid, expenses of advertisement, and other legal costs.

And the said William Stewart, for himself for h- — and for his heirs, executors, administrators and assigns, do further covenant to insure, and pending the existence of this Mortgage to keep insured, the improvements on the hereby mortgaged land to the amount of at least — Thousand Dollars, and to cause the policy to be effected thereon to be so framed or indorsed as, in case of fire, to inure to the benefit of the said Mortgagee his personal representatives and assigns, to the extent of his of their lien or claim thereunder; and further covenants that he will warrant specially the property hereby conveyed.

Witness our hands and seals

\_\_\_\_\_. [SEAL.]  
\_\_\_\_\_. [SEAL.]

Test:

\_\_\_\_\_.  
\_\_\_\_\_.

660 \_\_\_\_\_, ss:

I hereby certify that on this — day of — in the year one thousand nine hundred and six before the subscriber, a Notary Public in and for, District of Columbia aforesaid, personally appeared William W. Stewart and Blanch Stewart his wife and each acknowledged the foregoing Mortgage to be their separate act; and now at the same time before me personally appeared also — — the within named mortgagee-, and made — in due form of law that the consideration mentioned in the foregoing Mortgage is true and *bona fide*, as therein set forth; and also made — according to law that he — ha- not required the mortgagor, his agent or attorney or any person for the said mortgagor, to pay the tax levied upon the interest covenanted to be paid, in advance, nor will he require any tax levied thereon to be paid by the mortgagor or any person for — h- during the existence of this Mortgage.

Witness my hand and official seal.

\_\_\_\_\_.

This mortgage prepared by Joseph K. Roberts Att'y at Law, Upper Marlboro, Md.

661

*Assignment.*

— hereby assign the within Mortgage to — —.

Witness my hand and seal this — day of —, 190—.

— —. [SEAL.]

Test:

— —.

— —, ss.

I hereby certify that on this — day of — in the year one thousand nine hundred and —, before the subscriber, a — in and for — aforesaid, personally appeared — — above-named assignee, and made oath in due form of law that he has not required the mortgagor, his agent or attorney, or any person for the said mortgagor, to pay the tax levied upon the interest covenanted to be paid, in advance, nor will he require any tax levied thereon to be paid by the mortgagor or any person for him during the existence of this Mortgage.

Witness my hand and official seal.

— —.

662

*Release.*

— hereby release the within Mortgage.

Witness — hand- and seal- this — day of —, 190—.

— —. [SEAL.]

— —. [SEAL.]

Test:

— —.

(Endorsed:) Mortgage from — — to — —. Received for Record on the — day of —, A. D. 190— at — o'clock — M., and recorded in Liber No. — folio —, one of the Land Records for —. — —, clerk.

663 \$1154 60/100.

WASHINGTON, D. C., Dec. 15, 1903.

Three Years after date for value received, I promise to pay to Dr. L. A. Griffith Executor Alfred W. Ball or order, Eleven Hundred and Fifty Four 60/100 Dollars, at —, with interest at the rate of 6 per centum per annum, payable annually.

No. —.

Due —.

— —,  
Address, —.

[On the left margin:] Secured by mortgage on 288 $\frac{3}{4}$  acres of real estate near Meadows P. O., Pr. Geo. Co., Md.



664 \$1154 60/100.

WASHINGTON, D. C., Dec. 15, 1903.

Four Years after date, for value received, I promise to pay to Dr. L. A. Griffith, Executor of Alfred W. Ball or order Eleven Hundred and fifty four 60/100 Dollars, at —, with interest at the rate of 6 per centum per annum, payable annually —.

No. —.

Due —.

—, —,  
Address, —.

[On the left margin:] Secured by mortgage on 288 $\frac{3}{4}$  acres of real estate near Meadows P. O., Pr. Geo. Co., Md.

665 \$1154 60/100.

WASHINGTON, D. C., Dec. 15, 1903.

Five Years after date, for value received, I promise to pay to L. A. Griffith, Executor of Alfred W. Ball or order, Eleven Hundred and fifty four 60/100 Dollars, at —, with interest at the rate of 6 per centum per annum, payable Annually —.

No. —.

Due —.

—, —,  
Address, —.

[On the left margin:] Secured by mortgage on 288 $\frac{3}{4}$  acres of real estate near Meadows P. O., Pr. Geo. Co., Md.

666

*Supplemental Decree.*

Filed March 13, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Equity. No. 24484, Doc. 54.

LEWIS A. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

This cause coming on for hearing on the pleadings and testimony filed herein and the decree heretofore passed by this Court herein and the deed in fee, purchase money mortgage and three certain promissory notes directed to be executed, delivered and accepted on the conditions named in the aforesaid decree having been duly tendered by complainant to defendant for acceptance as to the deed in fee and execution as to the purchase money mortgage and notes aforesaid in accordance with the aforesaid decree and defendant, as admitted by his counsel in open court, having refused to accept the aforesaid deed in fee and to execute the aforesaid purchase

money mortgage and three certain promissory notes, all filed herewith it is by the Court this 13th day of March, 1906 adjudged, ordered and decreed that the aforesaid deed in fee, purchase money mortgage and notes were proper conveyances and securities and that a money decree be and hereby is directed to be entered up by the Clerk of the Court in favor of complainant against defendant for the sum of seven thousand and five hundred and eighty two and fifty hundredth- (\$7,582.50) dollars, with interest thereon from December 15, 1903, and the additional sum with interest of thirty five dollars and Claude D. Thomas hereby is appointed trustee for defendant in this cause and hereby is directed to receive from complainant and to accept the aforesaid deed in fee and is empowered and directed as trustee for the defendant to execute and deliver to the complainant the aforesaid purchase money mortgage and the aforesaid three certain promissory notes each for the sum of eleven hundred and fifty four and sixty four hundredths dollars at three, four and five years respectively from December fifteen, 1903, with interest thereon at the rate of six per centum per annum until paid.

WENDELL P. STAFFORD, *Justice.*

*Motion to Vacate Decree and for New Trial & Rehearing.*

Filed March 20, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 24484.

LEWIS A. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

And now comes the defendant, Stewart, and moves the Court to vacate the decree passed herein on the 13th day of March, 1906, and grant the defendant a new trial and rehearing of this cause, and for reasons therefor assigns the following.

First. Because of newly discovered and material evidence the non-discovery whereof before decree is not due to a want of diligence on the part of the defendant, but was due exclusively to the conduct of the complainant.

Second. Because the complainant's alleged power of attorney, a certified copy of which marked "Complainant's Exhibit A-1," is filed in the cause as the only evidence thereof, was not signed, executed or delivered by Alfred W. Ball, deceased, and the non-discovery thereof by the defendant before decree is not due to a want of diligence on the part of the defendant or his counsel.

Third. Because the original of the alleged power of attorney last aforesaid was altered in material particulars by or on behalf of the complainant to the prejudice of the defendant and the non-discovery

thereof by the defendant before decree is not due to a want of due diligence on his part or that of his counsel.

Fourth. Because the certified copy of the alleged power of attorney last aforesaid was materially altered by or on behalf of the complainant after the death of Alfred W. Ball and after the filing of this suit.

Fifth. That the alleged ratification of the said contract marked "Complainant's Exhibit E" was not signed, executed or delivered by the said Ball, or on his behalf, and the nondiscovery thereof by the defendant before decree is not due to a want of due diligence on the part of the defendant or his counsel.

Sixth. Because the complainant was not authorized by the  
669 alleged powers of attorney to enter into the contract made with the defendant so as to bind the defendant to performance.

Seventh. Because no performance on the part of the complainant or his principal was tendered on or before the 7th day of November, 1903.

Eighth. Because the Court ought not to exercise its discretion to enforce the alleged contract, same having been made by the defendant on behalf of the Maryland Oil and Development Company, as the complainant knew.

Ninth. Because the complainant terminated the defendant's right to purchase the alleged land on the 10th day of November, 1903, with the consent of the defendant and the defendant particularly acquiesced in said termination on the 23rd day of November, 1903.

Tenth. Because the complainant's alleged original power of attorney was revoked by the will of Alfred W. Ball on the 5th day of November, 1903, if the said power of attorney had any existence in law or fact.

Eleventh. Because the contract entered into by the complainant was not ratified by Alfred W. Ball in his lifetime by signing the said contract or by other acts.

Twelfth. Because the defendant did not waive the non-performance of the alleged contract on or before November 7th, 1903.

Thirteenth. Because the defendant refused to enter into a contract for the purchase of the said land from complainant as executor of Alfred W. Ball, after the 7th day of November, 1903.

Fourteenth. Because the complainant knew, at each inter-  
670 view with the defendant after the 7th day of November, 1903, that the defendant was acting only as the agent and on behalf of the Maryland Oil and Development Company in respect to the said land, and the defendant, as such agent, refused to enter into an agreement to purchase, or to purchase, the said land as such agent or otherwise, from the complainant as such executor.

Fifteenth. That by the complainant's own showing the title to the land involved is defective and is not such a title of which a court of equity will require a contract to purchase the same to be enforced.

Sixteenth. Because the price claimed for the said property is grossly excessive and the exaction thereof inequitable.

Seventeenth. Because the alleged contract sought to be enforced

was not a sale of the premises described, but was only an option to purchase on the 7th day of November, 1903.

And the defendant prays the Court to issue a subpoena *duces tecum* against ———, Register of Wills of Prince George's County, Maryland, requiring him to produce the alleged power of attorney and the alleged last will and testament of Alfred W. Ball, deceased, certified copies of which are filed in this cause marked respectively "Complainant's Exhibit A-1, and ———," to the end that their genuineness or spuriousness may be inquired into by the Court.

E. H. THOMAS,  
JAMES B. ARCHER, JR.,  
*Solicitors for the Defendant.*

671 Messrs. Ambrose and Merillat, solicitors for the complainant.

GENTLEMEN: Please take notice that the foregoing motion will be called to the attention of Mr. Justice Stafford, sitting in Equity Court No. 2, on Friday, March 23rd, 1906, at ten o'clock, or so soon thereafter as counsel may be heard.

E. H. THOMAS,  
JAMES B. ARCHER, JR.,  
*Solicitors for the Defendant.*

Reference is made for the purposes of the above motion to the whole record of testimony, and particularly to the following pages of complainant's testimony in chief, being the testimony of Griffith, Roberts and Ridgely.

Pages 8, 9, 10, 15, 40, 17, 25, 30, 31, 32, 35, 36, 59, 69, 70, 71, 130, 131, 132, 133, 134, 135, 136, 137, 137, 139, 140, 141, and 142.

DISTRICT OF COLUMBIA, ss:

William W. Stewart, being first duly sworn on oath says: he is the defendant in the above entitled cause: that he is informed and upon such information, and upon examination and inspection thereof, believes that the original of the power of attorney attempted to be proved in this cause by the alleged certified copy thereof known as "Complainant's Exhibit A-1," does not bear the genuine signature of Alfred W. Ball, deceased, but is a forgery in so far as said original purports to have been signed by said Alfred W. Ball, and he expects to prove by exhibition thereof and by witnesses whom he

672 expects to swear, that the said alleged power of attorney is a forgery so far as the same purports to have been signed by said Ball or to bear his genuine signature: that he is informed and upon such information and upon examination and inspection thereof believes and expects to prove by the exhibition thereof, and by witnesses whom he expects to swear thereto, that the alleged ratification marked "Complainant's Exhibit E" does not bear the genuine signature of Alfred W. Ball but is a forgery in so far as the same purports to have been signed by said Alfred W. Ball or to bear his, the said Alfred W. Ball's signature; that the said alleged

original power of attorney aforesaid is on file in the office of the Clerk of the Circuit Court of Prince George's County, Maryland, where the same was deposited by the complainant, and the same is beyond the power of production by the defendant, but a true and exact portrait and photograph thereof has been taken *and* from the same by an expert photographer and is referred to as a part of this affidavit; that the said alleged power of attorney exhibits and shows upon its face two material alterations as to the time for the consummation of the transaction referred to therein, namely the numerals "10" being altered to "150" and subsequently to "160," referring to the days; that said paper exhibits that the alleged provision therein for the compensation of the complainant has been interlined in the said paper although no notarial or other note or explanation thereof appears or was made upon the same; that although the complainant knew before the said paper was prepared for alleged execution that the purchase price was to be forty dollars an acre to affiant and not less than thirty five dollars an acre to said Ball the said paper  
673 exhibits that the sign and numerals "\$35" is written therein with a pen.

Affiant further says the said alleged certified copy, Exhibit A-1, filed with the bill, of said alleged power of attorney appears upon its face to be and to have been altered by changing the numerals "10" days to "150" days; that said alteration appears to have been made after the 23rd day of November, 1903, the said copy having been issued and certified on said date, and having contained the numerals "10" at the time of the decision of the cause on demurrer as evidenced by the opinion of the justice deciding said demurrer, and further this affiant remembering says the same was altered at the time of the hearing on demurrer from "10" to "150." The said figure "5" was inserted by counsel in this cause after the decision of Judge Anderson, to correct what was then believed to have been a mistake.

Affiant further says that neither he nor his counsel had opportunities to discover the forgeries and alterations aforesaid (except the alteration from "10" to "150" days aforesaid, which he and counsel supposed was to conform to the original) before the trial of this cause, nor until the 9th day of March, 1906: that as to the original of the alleged power of attorney, the same was attempted to be proved by the said alleged certified copy, Exhibit A-1, and the original being out of the District as aforesaid: that neither he nor his counsel had ever seen the alleged ratification of the contract or heard of same until it was produced in evidence at the hearing before ex-examiner: that on the day the same was produced in evidence the complainant asked permission to retain possession of it under claim in substance that it was a valuable paper, and  
674 copy same in the record: that neither the suspicions of the defendant or his counsel were aroused as to the genuineness of the originals or as to the complainant's not allowing the originals of said ratification to be under the observation of affiant or his counsel except for the momentary view during production thereof: that he now believes the production of an alleged copy of said alleged power

of attorney and the retention by complainant of the alleged ratification, as well as the non-production of the alleged short power of attorney, as well as the entire absence of original signatures or pretended signatures of Alfred W. Ball in the case are the purposed denial by the complainant of opportunity to the defendant and his counsel to discover and detect said alterations and forgeries, and all these things affiant expects to prove by competent evidence.

Affiant further submits excerpts from the testimony in this cause affecting the existence of any power of attorney as the basis of the alleged contract between complainant and the defendant, the materiality of which now for the first time appears in this cause, but affiant and his counsel have been greatly embarrassed in this defense by the confusion arising out of the evidence as to powers of attorney.

Affiant further says that the will of Alfred W. Ball bears his genuine signature as he believes and the production would and will furnish a standard of comparison, and it is necessary for the purposes of his defense that said will be produced and that prior to such production reference and inspection be had and made to a photograph of same: that the affiant has obtained an exact and genuine photograph thereof by an expert photographer and said photograph and the aforesaid photograph of the alleged original power of attorney are filed with the Clerk of the Court for inspection and reference and both of said photographs are expressly and purposely referred to as a part hereof.

WM. W. STEWART.

Subscribed and sworn to before me this 20th day of March, 1906.

J. R. YOUNG, *Clerk*.

By F. E. CUNNINGHAM, *Ass't Clerk*.

*Petition & Affidavit for Rehearing.*

Filed March 27, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 24484.

LEWIS A. GRIFFITH, Compl't,

*vs.*

WILLIAM W. STEWART, Defendant.

The petitioner, William W. Stewart, named hereinabove as defendant, respectfully represents as follows:

First. That he is informed and upon such information, and upon examination and inspection thereof, believes that the original of the power of attorney attempted to be proved in this cause by the alleged certified copy thereof known as "Complainant's Exhibit A-1," does not bear the genuine signature of Alfred W. Ball,



deceased, but is a forgery in so far as said original purports to have been signed by said Alfred W. Ball, and he expects to prove by exhibition thereof and by witnesses whom he expects to swear, that the said alleged power of attorney is a forgery so far as the same purports to have been signed by said Ball or to bear his genuine signature: that he is informed and upon such information and upon examination and inspection thereof believes and expects to prove by the exhibition thereof, and by witnesses whom he expects to swear thereto, that the alleged ratification marked "Complainant's Exhibit E" does not bear the genuine signature of Alfred W. Ball but is a forgery in so far as the same purports to have been signed by said Alfred W. Ball's signature; that the said alleged original power of attorney aforesaid is on file in the office of the Clerk of the Circuit Court of Prince George's County, Maryland, where the same was deposited by the complainant, and the same is beyond the power of production by the defendant, but a true and exact portrait and photograph thereof has been taken of and from the same by an expert photographer and is referred to as a part of this; that the said alleged power of attorney exhibits and show upon its face two material alterations as to the time for the consummation of the transaction referred to therein, namely the numerals "10" being altered to "150" and subsequently to "160," referring to the days; that said paper exhibits that the alleged provision therein for the compensation of the complainant has been interlined in the said paper although  
677 no notarial or other note or explanation thereof appears or was made upon the same; that although the complainant knew before the said paper was prepared for alleged execution that the purchase price to be paid by petitioner was to be forty dollars an acre and not less than thirty five dollars an acre to said Ball the said paper exhibits that the sign and numerals "\$35" is written therein with a pen.

Petitioner further says the said alleged certified copy, Exhibit A-1, filed with the bill, of said alleged power of attorney appears upon its face to be and to have been altered by changing the numerals "10" days to "150" days: that said alteration appears to have been made after the 23rd day of November, 1903, the said copy having been issued and certified on said date, and having contained the numerals "10" at the time of the decision of the cause on demurrer as evidenced by the opinion of the justice deciding said demurrer, and further this petitioner remembering says the same was altered at the time of the hearing on demurrer from "10" to "150." The said figure "5" was inserted by counsel in this cause after the decision of Judge Anderson, to correct what was then believed to have been a mistake.

Petitioner further says that neither he nor his counsel had opportunities to discover the forgeries and alterations aforesaid (except the alteration from "10" to "150" days aforesaid, which he and counsel supposed was to conform to the original) before the trial of this cause, nor until the 9th day of March, 1906: that as to the original of the alleged power of attorney, the same was attempted to be proved by

the said alleged certified copy, Exhibit A-1, and the original  
678 being out of the District as aforesaid: that neither he nor his  
counsel had ever seen the alleged ratification of the contract  
or heard of same until it was produced in evidence at the hearing be-  
fore an examiner: that on the day the same was produced in evidence  
the complainant asked permission to retain possession of it under  
claim in substance that it was a valuable paper, and copy same in the  
record: that neither the suspicions of the defendant or his counsel  
were aroused as to the genuineness of the originals or as to the com-  
plainant's not allowing the originals of said ratification to be under  
the observation of petitioner or his counsel except for the momentary  
view during production thereof; that by reason of aforesaid request  
petitioner, in order to have benefit of the contents of said ratification  
in conducting his defense and because the same was not to be where  
petitioner and counsel could have access to it, had Mr. A. W. Thomas  
copy same, and the space of time during which said Thomas had to  
copy same was so short that he, said Thomas requested petitioner also  
to copy same as he was writing so rapidly as to be in danger of im-  
properly copying same, and the petitioner at the same time copied  
said paper, and said copies are filed herewith and prayed to be read  
and considered as a part hereof: that he now believes the production  
of an alleged copy of said alleged power of attorney and the retention  
by complainant of the alleged ratification, as well as the non-produ-  
tion of the alleged short power of attorney, are the purposed denial  
by the complainant of opportunity to the defendant and his counsel  
to discover and detect said alterations and forgeries, and all these  
things petitioner expects to prove by competent evidence:

Petitioner further submits excerpts from the testimony in  
679 this cause effecting the existence of any power of attorney as  
the basis of the alleged contract between complainant and the  
defendant, the materiality of which now for the first time appears in  
this cause but affiant and his counsel have been greatly embarrassed  
in this defense by the confusion arising out of the evidence as to  
powers of attorney.

Petitioner further says that the will of Alfred W. Ball bears his  
genuine signature as he believes and the production would and will  
furnish a standard of comparison, and that it is necessary for the  
purpose of his defense that said will be produced and that prior to  
such production reference and inspection be had and made to a  
photograph of same and the petitioner has obtained an exact and  
genuine photograph thereof by an expert photographer and said  
photograph and the aforesaid photograph of the alleged original  
power of attorney are *are* filed with the Clerk of the Court for in-  
spection and reference and both of said photographs are expressly  
and purposely referred to as a part hereof.

Second. Petitioner further avers that he is advised by counsel  
and believes that the evidence as the same appears in the record of  
proofs and exhibits supports the following conclusions, to-wit, that  
neither the complainant nor the *the* said Ball nor any one for or on  
behalf of either of them performed or tendered performance of the  
things by them or either of them to be done under the contract sued

upon on or before the 7th day of November, 1903; that the complainant terminated the defendant's right to purchase the alleged land on the 10th day of November, 1903, with the consent of this defendant and the defendant particularly acquiesced in said termination on the 23rd day of November, 1903; that the complainant's alleged original power of attorney was revoked by the will of Alfred W. Ball on the 5th day of November, 1903 if the said power of attorney had any existence in law or fact; that the contract sued upon by the complainant was not ratified by Alfred W. Ball in his lifetime by *saying* said contract or by other acts; that the defendant did not waive performance of the said contract by the complainant on or before the 7th day of November, 1903; that the defendant refused to enter into a contract for the purchase of the said land from complainant as executor of Alfred W. Ball after the 7th day of November, 1903, or to revive the said contract; because the complainant knew, at each interview with the defendant after the 7th day of November, 1903 that the defendant was acting exclusively as agent for and on behalf of the Maryland Oil and Development Company; that by the complainant's own showing the title to the land involved is defective and is not such a title as a court of equity will require the exceptance of in the specific performance of a contract.

And petitioner further says that since the decree was passed he has discovered that the said Ball by his agreement and covenant under seal dated the 11th day of March, 1902 and recorded in Liber No. 7, at folio 157 of the land records of Prince George's County, Maryland declared and represented the said land as containing about 125 acres.

Third. Petitioner avers that at the hearing of this cause his counsel did not have opportunity to present the matters set out in the second paragraph hereof because the court expressed a wish to hear from the counsel for the complainant upon matters which seemed to be controlling and is advised and believes that said matters and the testimony in support thereof to which, as the same appears of record, he refers, upon a rehearing would induce the court to enter a decree in his favor. Petitioner further refers to the affidavits filed herewith as supporting the contentions hereof and to the photographs filed in the Clerk's office showing the will of Alfred W. Ball and the alleged power of attorney the originals of both of which are beyond the power of the petitioner to produce but material to be before the Court.

Wherefore your petitioner prays as follows:

First. That the decree passed herein on the 13th day of March 1906 be vacated and that he be granted a rehearing of this cause.

Second. That upon the vacation of said decree this cause may be referred to the examiner for further proof in conformity to this petition.

Third. That he may have the benefit of the writ of *subpoena duces tecum* in order to require production before the Court of the

original papers described as being in the possession of the Orphan's Court of Prince George's County.

Fourth. For such other and further relief as may be appropriate in the premises.

WM. W. STEWART.

E. H. THOMAS,  
JAMES B. ARCHER,  
Solicitors for Petitioners.

DISTRICT OF COLUMBIA, ss:

I, William W. Stewart do solemnly swear that I have read  
682 the above petition by me subscribed and know the contents  
thereof; that the facts therein stated as of my personal knowl-  
edge are true and those stated upon information and belief I be-  
lieve to be true.

WM. W. STEWART.

Subscribed and sworn to before me this 27th day of March, 1906.

J. R. YOUNG, *Clerk*,  
By F. E. CUNNINGHAM,  
*Ass't Clerk*.

Messrs. Ambrose & Merillat, solicitors for complainant.

GENTLEMEN: Please take notice that the within petition will be submitted to Mr. Justice Stafford on Friday, March 30th, 1906, for his action in connection with the petition and motion heretofore filed.

E. H. THOMAS,  
JAMES B. ARCHER, JR.

DISTRICT OF COLUMBIA, ss:

Edward M. Schaeffer, being first duly sworn on oath says he is a resident of the city of Washington, District of Columbia, a physician by profession and an expert in hand-writing and inks; that he has  
683 been accepted by the courts in different states and the District  
of Columbia as an expert in handwriting and inks; that the  
first case of handwriting that he remembers testifying in  
was in Caroline County, Maryland, in the year 1883: that since that  
time he has testified in many cases and also has been consulted in  
many cases where owing to his adverse opinion of the exhibits the  
parties did not call him as a witness in court.

In Equity cause No. 24,484, known as Griffith *versus* Stewart in this court he has examined the photographic copy of the last will and testament of Alfred W. Ball including the signature thereto: he has also examined the photographic copy of the alleged power of attorney from said Ball to Lewis A. Griffith and other papers which he has compared with the signature and writing on a document known as the ratification of the contract entered into between L. A. Griffith and Wm. W. Stewart, said paper bearing date June 19th 1903 alleged to have been signed by Alfred W. Ball, from which he

has formed the opinion and will so testify that if the signature of the said Alfred W. Ball to the said last will and testament is genuine then the signatures to the said alleged ratification and the alleged power of attorney aforesaid are not genuine, and that the said power of attorney has been altered in several places changing its meaning and especially where the figures 160 have been written over a type-written figure which is by such written figure nearly concealed, and that there is not explanation of such alterations by any proper officer or by any note or explanation.

EDWD. M. SCHAEFFER, M. D.

Subscribed and sworn to before me this 27th day of March, 1906.

[SEAL.]

SAMUEL H. WALKER,

Notary Public, D. C.

684 DISTRICT OF COLUMBIA, ss:

Personally appeared before me Edwin B. Hay, who on oath says: He is a resident of the City of Washington, District of Columbia, an attorney at law, and an expert on handwriting. In the latter capacity he has been accepted by the Courts in the States of the Union and the District of Columbia during the past thirty-five years, during which number of years he has devoted study to the comparison of handwriting where questions have arisen in the dispute between genuine and spurious writings, and he has been called in many cases, to the number of hundreds, to testify concerning the same: Among the most noted cases in which affiant appeared are Oliver *versus* Cameron, and Hume *vs.* Pickrell in the District of Columbia; the People *vs.* Mollineaux; The People *vs.* Patrick; The People *vs.* Mann; the Tighe Will case; the Rice Will case in the City of New York; the Commonwealth *vs.* Tucker in the State of Massachusetts, the Samuel Davis Will case just decided in San Francisco, California, after a trial lasting six months: also he has been called in the capacity of handwriting expert in the departments of the government, and in the offices of the Department of Justice and the United States Attorney of the District of Columbia for a period covering the past quarter of a century.

In Equity Cause No. 24,484, known as Griffith *vs.* Stewart he has made examination of a photographic copy of a document having upon it the genuine signature of one Alfred W. Ball, being the last will and testament of the said Ball; a photographic copy of an alleged power of attorney from said Ball to the said Lewis A. Griffith, and other papers which he has compared with the signature and  
685 writing in and on documents known as a ratification of a contract entered into between L. A. Griffith and Wm. W. Stewart, said paper bearing date June 19th, 1903, alleged to have been signed by Alfred W. Ball, from which comparison he is of opinion, and will so testify, that if the signature of Alfred W. Ball to the last will and testament is genuine then the signatures to the said alleged ratification and to said alleged power of attorney aforesaid are not genuine, or the genuine signatures of said Ball, and that the said power of attorney has been altered and interlined in several

instances, the words "to be all" having been inserted and the figures before the word "days," giving the limit of time have been changed to 160, and no words of explanation by the officer executing the signature thereto appearing.

EDWIN B. HAY.

Subscribed and sworn to before me this 27th day of March, A. D. 1906.

J. R. YOUNG, *Clerk*,  
By F. E. CUNNINGHAM,  
*Ass't Clk.*

686 *Affidavits in Opposition to Motion for New Trial.*

Filed March 30, 1906.

STATE OF MARYLAND, *Prince George's County, ss:*

George W. Waters, Jr., being first duly sworn deposes and says: That he is the cashier of the Citizens' National Bank of Laurel Maryland: that early in June 1903, Dr. Lewis A. Griffith, of Upper Marlboro, Maryland, delivered to affiant a check of William W. Stewart, on the Columbia National Bank of Washington, D. C., for Five Hundred Dollars (\$500.00), with directions to notify said Griffith as soon as payment was secured upon the check; that thereafter on or about the 18th., day of June, 1903, affiant notified Lewis A. Griffith that the check had been paid to our correspondent and Lewis A. Griffith thereupon deposited to the credit of Alfred W. Ball, Three Hundred Dollars (\$300.00) on the 18th day of June 1903, and bank account was opened in the name of Alfred W. Ball and a bank book was made out as is customary, in the name of Alfred W. Ball and forwarded to him; and the balance of Two Hundred Dollars, (\$200.00), was given to Dr. Griffith; the sum of Three Hundred Dollars, (\$300.00), deposited as aforesaid to Alfred W. Ball remained untouched until December 5th., 1903, when said account was closed by Lewis A. Griffith as Executor of Alfred W. Ball drawing a check to the order of Lewis A. Griffith and then having said money deposited and credited to the account of Lewis A. Griffith as Executor of Alfred W. Ball. The checks of June 17th, December 3rd, and the bank book referred to are attached hereto as a  
687 part of this affidavit and made a part hereof.

G. W. WATERS, JR.

Subscribed and sworn to before me this 29th day of March, in the year of our Lord one thousand nine hundred and six.

WOODVILLE T. ASHBY, [SEAL.]  
Notary Public.

[NOTARIAL SEAL.]

STATE OF MARYLAND, *Prince George's County:*

Wm. S. Hill being first duly sworn deposes and says; that he is Cashier of the First National Bank of Southern Maryland, located at



Upper Marlboro, Md. and by reason of his position has had frequent opportunity to observe the signatures of various persons; that it is his experience and observation that persons frequently do not write their name- at all times in exactly the same way; that considerable will depend upon the state of the health, the occasion for signing the name and the circumstances and conditions under which it is written; that he finds that especially with comparatively illiterate persons who seldom have occasion to write there is at times considerable difference in their signatures that he has examined the signature of Alfred Ball to the Power of Attorney purporting to be signed by Ball and the signature to the will of Alfred Ball both on deposit with the Register of Wills of Prince George's County and that to the best of his knowledge and belief said signatures were made by the same person.

WM. S. HILL.

Subscribed and sworn to before me this 28th day of March, A. D. 1906.

[SEAL.]

J. ALFRED RIDGELY, J. P.

STATE OF MARYLAND, *Prince George's County, act:*

I hereby certify, That J. Alfred Ridgely Esquire, before whom the annexed affidavit was made, and who thereunto subscribed his name was at the time of so doing a Justice of the Peace of the State of Maryland, in and for Prince George's County, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgements. I further certify that I am acquainted with the handwriting of said Justice and verily believe the signature to be his genuine signature.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Prince George's County, this 28th day of March, A. D. 1906.

[SEAL.]

BENJ. D. STEPHEN,

*Clerk of the Circuit Court for Prince George's County.*

689 A. T. Brooke, being first duly sworn deposes and says:

That he has been Clerk of the Circuit Court for Prince George's County, Maryland, Cashier of the Citizens National Bank of Laurel, Maryland, and is now deputy County Treasurer of Prince George's County, Maryland. That it was his duty when cashier of the Citizens Bank and Clerk of the Circuit Court to closely examine signatures to documents and checks, that he has examined the signature of Alfred W. Ball to the Will filed in the office of the Register of Wills and also the signature to the power of attorney to Dr. Lewis A. Griffith and is fully satisfied that they were made by the same person. He has examined the undisputed signatures of Alfred W. Ball and finds that to the best of his knowledge and belief they were made by the same party signing the power of attorney. The signatures examined were to receipts and renunciations, accepted by the Court.

A. T. BROOKE.

Subscribed and sworn to before me this 28th day of March in the year of our Lord one thousand nine hundred and six.

WM. S. HILL, [SEAL.]

[NOTARIAL SEAL.]

*Notary Public.*

William R. Smith, Register of Wills for Prince George's County, Maryland, being first duly sworn deposes and says: He has carefully examined the signature of Alfred W. Ball to his last Will and Testament now on file in his office and the signature to the power of attorney to Dr. Lewis A. Griffith, and is fully convinced that they were signed by the same person.

That he has compared the signature to the power of attorney with the signature to papers on file in the office said papers having been accepted by the Orphans' Court and that he is fully satisfied that the signature to the power of attorney and that on the undisputed papers were made by the same person.

W. R. SMITH.

Subscribed and sworn to before me this 28th day of March in the year of our Lord one thousand nine hundred and six.

WM. S. HILL, [SEAL.]

[NOTARIAL SEAL.]

*Notary Public.*

J. Alfred Ridgely, being first duly sworn deposes and says: That he is a Justice of the Peace for Prince George's County, Maryland, and has been since January 1902. That he witnessed the signature of Alfred W. Ball to a power of attorney to Dr. Lewis A. Griffith on June 4th, 1903. That he has thoroughly examined the power of attorney given to Lewis A. Griffith by Alfred W. Ball now on file in the office of the Register of Wills for this County and knows it to be the same power of attorney witnessed by him on June 4th, 1903, at residence of Alfred W. Ball, near Meadows, and that he made this examination of the power of attorney now on file in the presence of W. R. Smith, Register of Wills on March 27th, 1906.

J. ALFRED RIDGELY, J. P.

Subscribed and sworn to before me this 28th day of March in the year of our Lord one thousand nine hundred and six.

WM. S. HILL, [SEAL.]

[NOTARIAL SEAL.]

*Notary Public.*

Subscribed and sworn to before me this 28th day of March in the year of our Lord one thousand nine hundred and six.

WM. S. HILL, [SEAL.]

[NOTARIAL SEAL.]

*Notary Public.*

STATE OF MARYLAND, Prince George's County, To wit:

I, W. R. Smith, Register of Wills for said County do hereby certify that it has not been, and is not now, the custom of the Orphans' Court of Prince George's County, to require any Administrator or

Executor to give an Inventory of moneys or property which has a fixed value, until they pass their account.

In testimony whereof I hereunto subscribe my name and  
692 affix the seal of the Orphans' Court of Prince George's County,  
Md. this 13th day of May, A. D. 1905.

W. R. SMITH,

[SEAL.]

*Reg. of Wills.*

William R. Smith being first duly sworn on oath says: He is Register of Wills for Prince George's County, Maryland, and has been since 1900. That he has in his custody the will and other papers belonging to the Estate of Alfred W. Ball among said papers is the power of attorney from Alfred W. Ball to Lewis A. Griffith bearing date of June 4th, 1903 and properly witnessed and sworn to before J. Alfred Ridgley as Justice of the Peace for said County; deponent knows the signature of Ridgley and that the same is genuine; deponent further says that both Lewis A. Griffith and J. Alfred Ridgley are and for years have been well known to deponent personally and by reputation and the reputation of each of them among those who know them is that of men of the highest character for veracity uprightness and integrity; he further states that said paper was filed by said Lewis A. Griffith November 17th, 1903, and to which there has been no objection by the Orphans' Court or by any of the heirs of law. He further states that the said Lewis A. Griffith has at different times examined said power of attorney and other papers belonging to the estate of Alfred W. Ball but in no instance has he examined them except under the immediate  
693 supervision and at his desk, nor has any person representing himself to be the attorney or agent of said Lewis A. Griffith. He further states that the said Lewis A. Griffith never at any time made any change or alteration in any paper belonging to said estate and could not have done so without his knowledge. Nor has any one representing himself to be the agent or attorney of the said Lewis A. Griffith made or attempted to make any change or alteration in the said power of attorney or any other paper belonging to the estate of Alfred W. Ball. He further states that A. W. Thomas of Washington, D. C., representing himself to be the attorney of William W. Stewart came to the office on or about Dec. 1903 and asked to examine and copy certain papers belonging to the estate of the said A. W. Ball, that in order to do so the said Thomas took the papers and records in the case of said Alfred W. Ball to the remote part of the room and he did not exercise immediate supervision over the said A. W. Thomas while examining or copying said records or papers. He further states that on or about March 9th, 1906, W. W. Stewart and another party claiming to be a photographer came to his office and asked permission to examine and photograph the paper claiming to be the power of attorney from A. W. Ball to Lewis A. Griffith that in order to do so they took said paper and the Will of Alfred W. Ball to the remote part of the room. That at no time has W. W. Stewart or any one representing himself to be the attorney or agent of W. W. Stewart been refused permission to examine these

694 or any other papers belonging to the estate of Alfred W. Ball. He further states that W. W. Stewart never requested him nor has any agent of W. W. Stewart requested him to appear at any examination either in Washington, D. C., or elsewhere. He further states that he has frequently taken wills into the District of Columbia when so requested and he believes that he had the right to take this will or other papers into the District of Columbia. He does not understand that he has any authority to allow any paper filed in that office to go out of his custody and has never done so. He further states that this power of attorney filed by Lewis A. Griffith has never been out of his possession or custody since filed November 17th, 1903.

W. R. SMITH.

Subscribed and sworn to before me this 28th day of March, A. D. 1906.

[SEAL.]

WM. S. HILL,  
*Notary Public.*

DISTRICT OF COLUMBIA, ss:

Charles H. Merillat being first duly sworn deposes and says:

That he was attorney for Lewis A. Griffith in the case of Griffith vs. Stewart; that he was taken into said case by William E. Ambrose, an attorney at law; that when affiant was first informed of  
695 the facts in the case he was advised that the contract of purchase and payment of a balance of one-half of the purchase money was to be complied with on or before November 7th, and that Alfred Ball had died about midnight of November 5th, or between that and 1:00 A. M. of November 6th; that he was advised that Alfred Ball had made the sale through Griffith that prior to the time affiant prepared the bill in equity in the case he was informed that the ratification was in writing and also was informed of the facts of the acceptance of money by Ball and his ratification of the contract by his acts as well as his writing; that when the time came to prepare the papers affiant went over the various exhibits and in preparing them did not see the written ratification and inquired for the same and Dr. Griffith informed him he had given it to Mr. Robert- and he thought Mr. Ambrose had the ratification. Mr. Ambrose, however, looked through his papers, but did not see it, but Dr. Griffith insisted that the written ratification must be somewhere among the papers of either Mr. Roberts or Mr. Ambrose. That affiant thereupon — it was a matter of indifference how the ratification was made in preparing the pleadings, that a ratification was all that there was occasion to allege and that perhaps it would be just as well not to allege whether or not the ratification was in writing or otherwise and it was evidence and not pleading and it perhaps would be advisable not to inform Stewart on that point and thereupon prepared the pleadings without stating anything with respect to the  
696 ratification and affiant said meanwhile an examination could be made of all the papers; that thereafter Mr. Roberts reported to him he could not find the paper and affiant had Mr.

Ambrose get out all papers that he Ambrose had received from Roberts on any matter of any sort, Mr. Ambrose having acted as attorney in other matters with Mr. Roberts; that affiant found the ratification among a number of letters and papers relating to various matters that Mr. Roberts had given to Mr. Ambrose; that the ratification was offered in evidence and at the time it was offered affiant requested that it be copied in the record as it was an important paper and might get lost and would take very little space; that affiant handed the paper to either the defendant or his counsel, Mr. E. H. Thomas, prior to the time he handed it to the examiner and they had made an inspection of the same; that thereafter affiant, at the session at which he offered the paper in evidence handed the same to the examiner; that affiant has no recollection of regaining possession of the ratification though as affiant treated the paper as a mere detail of the case affiant cannot state further, nothing occur to cause affiant to pay special attention to the matter, defendant and his counsel having full opportunity of examination of the ratification and no doubt arising as to its genuineness; that affiant later noticed the ratification had not been copied into the record when furnished a copy of the testimony later; that affiant on the day *the testimony* the testimony of the Surveyor Latimer was taken at Garfield hospital went to and returned from said hospital with the Examiner and affiant spoke of the fact the ratification was not in the record; that affiant at no time withheld inspection of any paper from the defendant or his counsel, or in any wise  
697 did anything to mislead them or to prevent their full access to an inspection of all papers and Dr. Griffith the complainant, had nothing to do with the papers from the time suit was entered, that with respect to the time for completion of the contract affiant at the hearing on demurrer before Mr. Justice Anderson stated that there evidently had been a clerical error made which would be corrected and that affiant did make the correction of the clerical error as to the number of days within which the contract was required to be performed, and the same was entirely a clerical error as all the evidence and papers in the case clearly show; that affiant knows that during the session of testimony taken a statement was made that A. W. Thomas had been to Marlboro and had inspected the papers and record there, that A. W. Thomas then was acting apparently in conjunction with the defendant Stewart and as his associate and attorney and defendant had full opportunity or must have had it to examine papers since they were of public record; that the defendant Stewart over objection of affiant placed on the witness stand a number of witnesses as to conversation that the decedent Ball they alleged had with them and that the statements of these witnesses showed that Ball knew it was to be in November that Stewart was to make further payment on the purchase of land in controversy; that at no time did affiant or the complainant Griffith so far as -his affiant is aware or any one else interpose the slightest objection to the fullest examination and inspection of all papers in the case; that affiant further says that at one time something was said

698 by defendant or his counsel respecting the original power of attorney and the statement was made it was filed with the Register of Wills and affiant on information from complainant stated the paper could be examined there; that affiant was willing to go to Marlboro and take testimony if there was any occasion therefor; but Mr. E. H. Thomas, attorney for defendant, said that he saw no occasion for it and could not spare the time and that the defendant or A. W. Thomas could go there; that the further statement was made that the Register of Wills could produce the paper in Washington, but that he of course would charge for coming to Washington if he were required to come and thereafter the matter was dropped; that with respect to the power of attorney in the case there was no confusion so far as affiant can see for the reason that affiant made that matter particularly clear, stating that the power of attorney with Dr. Griffith's commission included was on file with the Register of Wills; that Dr. Griffith had given A. W. Thomas a power of attorney signed by Alfred Ball without any reference to the Commission he, Griffith, was to receive and that there had been filed by Stewart as a part of the contract of purchase a realty deed and power of attorney attached to the deed; that Dr. Griffith never at any session did the slightest thing to mislead counsel or the defendant; that the matters now complained of were as accessible and available to defendant months before the testimony was closed as they are to-day; all being matters of public record; that affiant never did anything to mislead deceive or divert defendant or his counsel and that affiant neither now nor at any time has had or has the slightest reason to question the authenticity of any of the papers referred to by defendant.

CHAS. H. MERILLAT.

699 A. D. 1906.  
[SEAL.]

CLAUDE D. THOMAS,  
*Notary Public, D. C.*

In the Supreme Court of the District of Columbia, Holding an Equity Court.

LEWIS A. GRIFFITH

*vs.*

WILLIAM W. STEWART.

DISTRICT OF COLUMBIA, ss:

William E. Ambrose being first duly sworn deposes and says: That for more than a year prior to the institution of the suit of Griffith *vs.* Stewart he was associated with Joseph K. Roberts as attorney, representing Roberts in Washington in matters coming from Maryland; that Mr. Roberts placed in affiant's hands a number of papers relating to the litigation and which, or copies of which are included in the exhibits on file in the cause; that from the beginning it was



always stated and understood that the time for the payment of the balance of the one half of the purchase money as agreed to by Ball was November 7th; that when it was decided suit was probable affiant took Charles H. Merillat into the case; that when the time came to prepare the papers said Merillat enquired for the ratification, the same not being among the papers handed to him, but it being stated that the ratification was in writing; that thereupon Dr. Griffith who came to the City was asked in regard to the matter and insisted that he had given the ratification to Roberts; Mr. Roberts said that Mr. Ambrose had it but Mr. Ambrose stated that it was not among the papers; that thereupon Mr. Merillat stated it was a matter of indifference in the pleadings as the ratification would be equally binding whether orally or by acts or in writing but that a written ratification would be stronger evidence, that a search should be made and the paper found if possible; that thereupon Dr. Griffith and Mr. Roberts were instructed to search their papers for the written ratification and the bill was filed without awaiting their search and when they reported they could not find it among their papers Mr. Merillat insisted on a thorough overhauling of affiant's papers and the written ratification was found among a number of letters and other papers from Mr. Roberts and thereafter was handed to Mr. Merillat and possession so far as affiant knows retained by him until the same was offered in evidence.

WM. E. AMBROSE.

Subscribed and sworn to before me this 23rd day of March, A. D. 1906.

[SEAL.]

CLAUDE D. THOMAS,  
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

Edwin L. Wilson being first duly sworn deposes and says: That he is an Examiner in Chancery of the Supreme Court of the District of Columbia and acted as examiner in the case of Griffith vs. Stewart, in Equity No. 24484; that as such examiner he swore the witnesses, took all the testimony stenographically and afterwards reduced the same to typewriting; that certain exhibits were offered in evidence, before affiant, by counsel on behalf of the complainant and that among said exhibits was the ratification of the contract of sale with the signature "Alfred W. Ball" attached thereto; that Mr. Charles H. Merillat, one of the counsel for the complainant, requested affiant to copy this and other exhibits in the record, which was done; that said ratification was copied into the record at page 165; that affiant is not able to say absolutely at this time just when the said ratification was handed to him, but that it must have been given him at some time previous to the copying of same in the record, which was done immediately after the session of September 16th, 1904 as the record shows; that affiant has no knowledge of said ratification leaving his possession subsequently to the time he received it, but says that if it did he regained

possession of the same before filing of the complainant's testimony in this cause, to wit; March 29th. 1905; affiant further says that the exhibits and other papers in said cause, while in his possession are always open for inspection by any and all the parties and counsel connected with this cause; and that the exhibits and other papers in said cause, while in affiant's possession, were always carried to the different places, whenever and wherever testimony was taken for the purpose of reference thereto if requested.

Affiant further says that Mr. A. W. Thomas, one of the witnesses for the defendant, was present at most of the sessions of testimony held in said cause and that he came to the office of affiant on several occasions and there inspected the different papers and made abstracts from the testimony taken in said cause previous to the filing of same.

EDWIN L. WILSON.

Subscribed and sworn to before me this 29th day of March, A. D. 1906.

[SEAL.]

CLAUDE D. THOMAS,  
*Notary Public, D. C.*

DISTRICT OF COLUMBIA, ss:

Lewis A. Griffith being first duly sworn deposes and says: That he has been a practicing physician in Prince George's County, Maryland for many years and a member of the State Board of Medical Examiners of the State of Maryland and a judge of the Orphans' Court of Prince George's County, Maryland; that he had been personally acquainted with Alfred W. Ball and his brother James for about five years prior to their deaths though he had been on their place only once prior to the first beginning of the present controversy; that he undertook the sale of Alfred Ball's farm at the personal request of Alfred Ball; that Alfred Ball was a comparatively illiterate man and could write his name but lived a retired life and was unacquainted with business affairs and methods; that Alfred Ball had been approached to sell the farm to William W. Stewart; that affiant did not seek Stewart to sell the land to him but affiant was approached by agents of said Stewart and by said Stewart himself; that affiant was informed by said Stewart that affiant must have a power of attorney, which affiant knew, to sell as Alfred W. Ball's agent, to Stewart and at Stewart's request the power of attorney was drafted, affiant employing his attorney, Joseph K. Roberts, to prepare the draft and then going to Alfred Ball's house with Justice of the Peace Ridgeley to secure its execution and at the same time having an appointment with said Stewart to meet him later after affiant's visit to Alfred Ball's house respecting the sale and the power of attorney; that affiant met said Stewart in the yard out-side of Ball's house after affiant had visited Ball and procured the power of attorney stated by Stewart to be necessary; that affiant had two powers of attorney prepared by said Roberts but certain parts were left blank to be filed in after affiant's consultation with Ball; that affiant knew that Ball was always called "Allie" Ball but did not know what was his real full name and for that reason left this part

blank; that affiant also left blank certain spaces for figures or terms of sale in the power of attorney which Roberts prepared and which affiant took, in pursuance of his agreement with Stewart, to Ball's house, among the questions left undetermined being the price and affiant's commission; that affiant and Ball arranged that the price should be \$35.00 per acre and that sale must be consummated early in November, and that affiant should receive as his compensation the price he was able to procure over and above Thirty-five dollars per acre; that at this time the oil excitement in Ball's neighbor-

704 hood was at its height; that when he came out of Ball's house Stewart, who it had been agreed should meet affiant in Centerville, had driven over to Ball's house and was in the yard; that affiant had two powers of attorney, one including his, affiant's commission and the other not including his commission, the reason for this being that it was not desired Stewart should know anything upon this point; that Stewart enquired of affiant if affiant had power of attorney to act for Ball and affiant informed him he had but did not show Stewart the power of attorney; that affiant and Stewart agreed on the terms of sale and arranged for Stewart to have until the following Monday to make his first payment of Five hundred Dollars; that instead of awaiting until Monday Stewart sent his agent, A. W. Thomas, to Marlboro and there said Thomas enquired at the out-set for affiant's power of attorney and affiant showed him the power of attorney executed by Ball that did not include affiant's commission; that affiant took with him to Ball's Mr. Ridgley, a justice of the peace in Prince George's County for the Marlboro District, and the powers of attorney were executed by Ball in the presence of the Justice of the peace Ridgley; that the signature appended to the power of attorney mentioned in Stewart's affidavit on his motion for rehearing and to vacate the decree, which power of attorney is now lodged in the office of the Register of Wills of Prince George's County and not in the Circuit Court office, is the genuine signature of Alfred W. Ball, and that Alfred Ball signed the said power of attorney in affiant's presence and in the presence of Ridgley, a Justice of the Peace who certified to the same; that the power of attorney not including witness' commission was delivered to A. W.

705 Thomas, but the power of attorney that did include witness' commission was placed by affiant in his, affiant's safe and kept there until after Ball's death; that both powers of attorney bore the genuine signature of Alfred W. Ball and both were witnessed by Mr. Ridgley, the Justice of the Peace; that after affiant delivered the power of attorney, executed by Ball but not including witness' commission, to A. W. Thomas said A. W. Thomas drafted an agreement of sale which affiant signed as did the said Thomas; that thereafter the papers in the case were put in typewritten shape by the attorney whom both sides had chosen to act for them, Mr. Joseph K. Roberts aforesaid, the affiant thereafter signed the typewritten paper as requested and affiant is informed and believes the typewritten agreement was delivered by Joseph K. Roberts aforesaid, to William W. Stewart in Washington and there signed by said Stewart; that said Stewart, as affiant is informed by the custodians of the land records

of Prince George's Co., the clerk of the Circuit court, sent for record the typewritten agreement and with it and attached to it a power of attorney, which paper is in evidence in this cause, and the signature to which power of attorney transmitted by Stewart is in typewriting certified to by Mr. Ridgeley, Justice of the Peace, but which affiant never knew until the trial of the cause, as affiant turned the power of attorney as executed by Ball over to A. W. Thomas and never saw the same nor the agreement of sale to which it was attached after the time either of these papers left his hands; that affiant never at any time altered or changed the powers of attorney after Alfred W. Ball

signed the same, either the power of attorney, deposited by  
706 him with the Register of Wills of Prince George's County or the power of attorney delivered to A. W. Thomas; that affiant retained the power of attorney deposited with the Register of Wills, which as stated included affiant's commission, until after Alfred Ball's death in November, 1903 and that affiant thereafter never at any time saw the power of attorney deposited with the Register of Wills except in the immediate presence of the Register of Wills and never altered the same or had an opportunity so to do; that affiant deposited this power of attorney with the Register of Wills as a part of his proposed proceedings against Stewart and also because it dealt with the subject of affiant's commissions and claims against the estate; that affiant on receiving the first payment of five hundred dollars from the defendant William W. Stewart, deposited the check in the Citizens National Bank of Laurel, with directions to collect the same and on notification of its payment affiant, by Ball's direction, deposited three hundred dollars to Alfred Ball's credit with the Citizens National Bank and of the remaining two hundred dollars gave Alfred Ball one hundred dollars in money and affiant with Ball's permission retained one hundred dollars on account of his commission and services; that said deposit of three hundred dollars to Alfred W. Ball's credit was duly entered up in a bank book of the Citizens National Bank and the bank book was delivered to Alfred W. Ball, who retained possession of it so far as affiant is aware until his death, after which event affiant found said bank-book among the effects of Alfred Ball and as Alfred Ball's executor took possession of

the same; that Alfred Ball at all times was aware of what  
707 affiant had done and of the terms of sale and ratified the same both orally and in writing and at the time of his death was awaiting consummation of the sale on or before November 7th; that affiant after Alfred Ball's death drew his check as executor of Alfred Ball's estate and deposited the same endorsed so as to transfer the account to affiant as executor of Alfred Ball; that it is not the custom in Prince George's County to return with the inventory of the estate, moneys held in cash until settlement of accounts and affiant for this reason and following what as judge of the probate court he knew was the custom until his account was passed did not in his inventory return the money in bank; that affiant was present at most if not all of the sessions of testimony in the pending cause and that during said session of testimony Mr. E. H. Thomas, attorney for William W. Stewart, had marked for identification but without showing or dis-

closing it, the original paper which said Stewart had sent for record among the land records of Prince George's County, being the agreement of sale and attached power of attorney and certain remarks were made reflecting on the officials of Prince George's County in connection with the recording of the power of attorney and agreement of sale, but it appeared when said paper was produced and put in evidence that Stewart himself had recorded the same, and affiant refers to the testimony taken in this matter; that during the session of testimony it was once or twice suggested there might be some occasion to take testimony in Prince George's County and affiant and his attorney stated their entire willingness to take the testimony there and that it would suit their convenience but Mr. E. H.

708 Thomas, attorney for defendant, said he could not go there to take any testimony if it could possibly be avoided; that during one of these conversations some remark was made to the effect that Stewart or A. W. Thomas should go to Marlboro and examine the papers there and affiant knows that during the hearing of the pending cause and, as affiant believes, also before the cause was instituted, A. W. Thomas representing himself to be acting for Dr. Stewart, came to Marlboro, and, as affiant is informed, examined the papers bearing on the pending cause on file in Marlboro; that affiant never at any time did the slightest thing to impede, restrict, deflect, prevent or avert any examination of any papers in the pending cause by the defendant or his attorneys or representatives; that affiant prior to the time he instituted the pending cause turned over all papers in the case except the bank book aforesaid and a few papers which during the progress of the cause his attorney told him to search for to his attorneys; that before suit was instituted among the papers affiant turned over to Mr. J. K. Roberts was the ratification of Alfred W. Ball signed by him, that Joseph K. Roberts as affiant was informed later turned the papers over to William E. Ambrose, that affiant knows that subsequently, when Charles H. Merillat, was drafting a bill in equity affiant was asked for the written ratification, the same not being among the papers placed with Mr. Merillat, and affiant having stated to Mr. Merillat on a visit to Washington that the ratification was in writing; that affiant insisted Mr. Ambrose or Mr.

Roberts must have the ratification but Mr. Ambrose insisted  
709 he had turned over to Mr. Merillat all the papers he had; that Mr. Merillat stated that it was not necessary to allege in the bill whether the ratification was in writing or not but the ratification should be procured if possible for use later; that a search later was made as affiant is informed by Mr. Roberts and thereafter by Mr. Ambrose or Mr. Merillat and the ratification finally was found among some papers in one of Mr. Ambrose's jackets and was turned over at once to Mr. Merillat and affiant never at any time had said ratification in his custody and never did the slightest thing to prevent or deflect the defendant or his attorneys from a full inspection and examination of said ratification or any other paper in the cause; that there never was at any time any statement in the power of attorney requiring consummation of the sale within ten days and no such period ever was considered or mentioned by Alfred Ball or any of

the parties to the cause and that from the beginning it was contemplated Stewart should have from three to six months to put up the balance of one half of the purchase money and five months finally was agreed on; that affiant never at any time altered the power of attorney after Ball had signed the same and that it was a clerical error whereby ten days was stated as the time for payment of the balance of one-half of the purchase money and at the hearing of the demurrer it was stated this was an error and that one hundred and fifty days should have been named and immediately after the hearing the correction was made but, as affiant's counsel informed him, for purposes of the demurrer ten days would stand. Affiant specifically and positively denied each and every allegation of defendant that affiant or any one acting for or on behalf or known to him at any time has altered or forged any paper in the cause or any paper put in evidence by means of certified copy, and affiant also denies withholding any paper from defendant or any wise deceiving or misleading defendant.

L. A. GRIFFITH.

Subscribed and sworn to before me this 24th day of March A. D. 1906.

[SEAL.]

CLAUDE D. THOMAS,  
*Notary Public, D. C.*

DISTRICT OF COLUMBIA, ss:

F. A. Tschiffely being first duly sworn deposes and says: That he is a wholesale druggist doing business in the District of Columbia; that he is well acquainted with Dr. Lewis A. Griffith practicing physician of Upper Marlboro, Maryland and is personally well acquainted with others who know said Griffith; that the reputation for truth, veracity and integrity of said Griffith has never been called in question and that said Griffith's reputation among those who know him and whom affiant knows for truthfulness, honesty and integrity is without a blemish.

F. A. TSCHIFFELY.

Subscribed and sworn to before me this 29th day of March, A. D. 1906.

[SEAL.]

CLAUDE D. THOMAS,  
*Notary Public, D. C.*

DISTRICT OF COLUMBIA, ss:

Lewis A. Griffith being first duly sworn deposes and says: That he made inquiries at the office of the Register of Wills of Prince George's County of Register of Wills W. R. Smith to learn if there had been any experts to examine the power of attorney and will of Alfred W. Ball and he was told that nobody had examined them for Stewart or any other person representing said Stewart since Stewart was there on March 9th; that this information was given him late in the afternoon of Thursday March 29th, 1906.

LEWIS A. GRIFFITH.



Subscribed and sworn to before me this 30th day of March, A. D. 1906.

[SEAL.]

CLAUDE D. THOMAS,  
Notary Public, D. C.

Charles A. Wells being first duly sworn deposes and says: That he is the President of the Bank of Southern Maryland and has lived in Prince George's County, State of Maryland for a number  
712 of years, and is well acquainted with Dr. Lewis A. Griffith a practicing physician in the said County and State and that the reputation of said Lewis A. Griffith for uprightness, integrity and veracity is without a blemish and affiant never has heard the same questioned.

CHAS. A. WELLS.

Subscribed and sworn to before me this 28th day of March, A. D. 1906.

[SEAL.]

W. HAMPTON HICKEY,  
Notary Public.

STATE OF MARYLAND, *Prince George's County*, as:

George C. Merrick, being first duly sworn deposes and says: That he is a Judge of the Circuit Court of the State of Maryland for the District including Prince George's County, and that he is personally well acquainted with Dr. Lewis A. Griffith and knows well said Griffith and others who know said Griffith; that the reputation of said Griffith for truth, veracity, and honesty is good.

GEO. C. MERRICK, A. J.

Subscribed and sworn to before me this 29th day of March in the year of our Lord one thousand nine hundred and six.

[NOTARIAL SEAL.]

WM. S. HILL, [SEAL.]  
Notary Public.

713 STATE OF MARYLAND, *Prince George's County*:

Father Frank A. Schawallenberge being first duly sworn deposes and says: That he is a Priest of the Catholic Church located at Upper Marlboro, Maryland; that he has lived in Prince George's County for three years; that he knows Dr. Lewis A. Griffith and is personally well acquainted with said Griffith and is personally well acquainted with others in the community who know said Griffith; that the reputation of said Griffith for honesty, veracity and integrity is excellent and affiant has never heard same questioned.

FRANK A. SCHAWALLENBERGE.

Subscribed and sworn to before me this 29th day of March, A. D. 1906.

[SEAL.]

WM. S. HILL,  
Notary Public

STATE OF MARYLAND, *Prince George's County*:

Rev. Francis E. McManus being first duly sworn deposes and says: That he is the Minister of the Episcopal Church located at Upper Marlboro, Maryland; that he has lived in Prince George's County for two years; that he knows Dr. Lewis A. Griffith and is personally well acquainted with said Griffith and *that* others in the community who know said Griffith; that the reputation of said Griffith for honesty, veracity and integrity is excellent and affiant never has heard same questioned.

FRANCIS E. McMANUS.

Subscribed and sworn to before me this 29th day of March, A. D. 1906.

[SEAL.]

WM. S. HILL,  
*Notary Public.*STATE OF MARYLAND, *Prince George's County*:

Charles I. Wilson, being first duly sworn deposes and says: That he is editor of the Upper Marlboro Gazette, that his residence is in Upper Marlboro, Maryland and that he has lived in Prince George's County for 30 years; that he is well acquainted with J. Alfred Ridgley Justice of the Peace for the said County and has known him for 25 years; and is well acquainted with others who know said Ridgley; that the reputation for truth, veracity and integrity of said Ridgley has never been question- and that said Ridgley's reputation among those who know him and whom affiant knows for truthfulness, honesty and integrity is without a blemish; affiant further says that he has never *has* heard same questioned.

CHARLES I. WILSON.

Subscribed and sworn to before me this 29th day of March, 715 A. D. 1906.

[SEAL.]

W. S. HILL,  
*Notary Public.*STATE OF MARYLAND, *Prince George's County*:

Frederich Sasscer being first duly sworn deposes and says: That he is editor of the Prince George's Enquirer; that his residence is in Upper Marlboro, Maryland and that he has lived in Prince George's County for 40 years; that he is well acquainted with J. Alfred Ridgley, Justice of the Peace for said County and has known him for 30 years and is well acquainted with others who know said Ridgley; that the reputation for truth, veracity and integrity of said Ridgley has never been questioned and that said Ridgley's reputation among those who know him and whom affiant knows for truthfulness, honesty and integrity is without a blemish.

FREDERICH SASSCER.

Subscribed and sworn to before me this 29th day of March, 1906.

WM. S. HILL,  
*Notary Public.*

[SEAL.]

716 Richard N. Ryon, former Treasurer of Prince George's County, State of Maryland, being first duly sworn deposes and says: That he has lived in Prince George's County, State of Maryland for some years and is well acquainted with both Dr. Lewis A. Griffith a physician and J. Alfred Ridgley a Justice of the Peace of Prince George's County and knows others who know them and that the reputation of each of these gentlemen for uprightness, integrity and veracity is without a blemish and affiant never heard same questioned.

RICHARD N. RYON.

Subscribed and sworn to before me this 28th day of March, A. D. 1906.

WM. S. HILL,  
*Notary Public.*

[SEAL.]

R. Irving Bowie, being first duly sworn deposes and says: That he has lived in Prince George's County, Maryland, for some years and is one of the Judges of the Orphans' Court of said County, and is well acquainted with both Dr. Lewis A. Griffith, a physician and J. Alfred Ridgley a justice of the Peace of Prince George's County, Maryland and knows others who know them and that the reputation of each of these gentlemen for uprightness and integrity and veracity is without a blemish and affiant has never heard the same

717 questioned.

R. IRVING BOWIE.

Subscribed and sworn to before me this 29th day of March in the year of our Lord one thousand nine hundred and six.

WM. S. HILL, [SEAL.]  
*Notary Public.*

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA, ss:

Charles W. Darr being first duly sworn deposes and says: That he is a lawyer, practicing law in the District of Columbia; that he is well acquainted with Dr. Lewis A. Griffith, a practicing physician of Upper Marlboro, State of Maryland; that the reputation for truth, veracity and integrity of said Griffith has never been called in question and that said Griffith's reputation among those who know him and whom affiant knows for truthfulness and integrity is without blemish.

CHAS. W. DARR.

Subscribed and sworn to before me this 29th day of March, A. D. 1906.

CLAUDE D. THOMAS,  
*Notary Public, D. C.*

[SEAL.]

718 DISTRICT OF COLUMBIA, ss:

Rev. Charles F. Santag, being first duly sworn deposes and says: That he is a Minister of an Episcopal Church in the City of Washington, District of Columbia; that he has lived in said City and District for 7 years; and at Marlboro, Md., the home of Dr. L. A. Griffith for six years; that he personally well knows Dr. Lewis A. Griffith and has known him for 13 years and that the Dr. was a parishioner of affiant for six years; that the reputation of said Dr. Lewis A. Griffith for honesty, veracity and integrity is without a blemish and affiant never has heard the same questioned.

CHAS. F. SANTAG,  
*Rector Luke Episcopal Church,  
9th & D Sts., S. W., Washington, D. C.*

Subscribed and sworn to before me this 28th day of March, A. D. 1906.

[SEAL.] CLAUDE D. THOMAS,  
*Notary Public, D. C.*

719 *Decree Vacating Decrees & for Rehearing.*

Filed April 2, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

In Equity. No. 24484, Doc. 54.

LEWIS J. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

This cause coming on to be heard on the motion and petition of the defendant for a rehearing on the merits and the affidavits filed in opposition thereto, was argued by counsel for the respective parties and submitted to the Court: Thereupon it is this 2nd day of April, 1906, by the Court adjudged, ordered and decreed that the decrees heretofore passed in this cause be and the same are hereby set aside and vacated; and further that this cause be and the same is hereby opened for re-argument, and for the purpose of taking testimony respecting the validity of the paper writings called a ratification and the long power of attorney herein, and claimed by complainant to bear the genuine signature of Alfred W. Ball, deceased, and that after said testimony is taken and filed that this cause be re-heard.

By the Court:

WENDELL P. STAFFORD,  
*Associate Justice.*

720

*Subpœna Duces Tecum.*

Issued April 10, 1906.

In the Supreme Court of the District of Columbia.

In Equity. No. 24484.

LEWIS J. GRIFFITH, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

The President of the United States to W. R. Smith, register of wills,  
Prince George's County, Maryland:

You are hereby commanded to appear as a witness for the defendant, before J. A. Sweeney, Examiner in Chancery, at No. 458 Louisiana Avenue, N. W., Washington, D. C., Room No. 1, on the 12th day of April, 1906, at eleven o'clock A. M., and bring with you the last will and testament (original) of Alfred W. Ball, deceased, recorded in Book W. R. S. No. 1, folio 286. Also Exhibit A, filed with the petition of Lewis A. Griffith, November 23rd, 1903, purporting to be a power of attorney from Alfred W. Ball, to L. A. Griffith. Also the original bond and renunciation bearing the signature of Alfred W. Ball, filed in the administration case of James W. Ball, deceased, and not depart the Court without leave.

Witness: the Honorable Harry M. Clabaugh, Chief Justice of said Court, this tenth day of April, 1906.

JOHN R. YOUNG, *Clerk.*

Let this writ issue:

[SEAL.] WENDELL P. STAFFORD, *Justice.*

721

*Marshal's Return.*

Summoned W. R. Smith personally, and a copy of *subpœna duces tecum* left with him April 11, 1906.

JOHN F. LANGHAMMER,

*U. S. Marshal.**Final Decree, Appeal, &c.*

Filed July 2, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 24484, Doc. 54.

LEWIS A. GRIFFITH, Executor,

*vs.*

WILLIAM W. STEWART.

The decree heretofore entered in this cause having been vacated, new testimony taken, and a rehearing had, the Court is of opinion

that the heirs and devisees of Alfred W. Ball are indispensable parties and that the deed tendered by the Complainant was insufficient to pass the title, for which reasons alone the former decree was erroneous and the bill must be dismissed. It is by the Court this 2nd day of July, 1906 adjudged, ordered and decreed that said Bill be and the same is dismissed with costs to be taxed by the Clerk. From which decree the Complainant in open Court notes an appeal to the Court of Appeals and the bond for costs on said  
722 appeal is hereby fixed at one hundred dollars.

WENDELL P. STAFFORD, *Justice*.

*Order Extending Time for Transcript.*

Filed July 2, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 24484, Doc. 54.

LEWIS A. GRIFFITH, Executor,

*vs.*

WILLIAM W. STEWART.

On application of Complainant and by consent of Counsel for defendant, it is by the Court this 2nd day of July, 1906 ordered, that the time for making up record and filing transcript thereof in the Court of Appeals on the appeal noted in this case be and the same is hereby extended to October 1st, 1906.

WENDELL P. STAFFORD, *Justice*.

*Memorandum.*

July 10, 1906.—Appeal bond filed.

723 *Order Further Extending Time for Filing Transcript.*

Filed September 10, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24484, Doc. 54.

LEWIS A. GRIFFITH, Ex'r, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

On motion of counsel for complainant, counsel for defendant consenting, it is by the Court this 10th day of September, 1906, ordered that the time for filing the transcript of record in the above entitled cause in the Court of Appeals be and the same hereby is extended to the 25th day of October, 1906, inclusive.

ASHLEY M. GOULD, *Justice*.



*Motion to Further Extend Time for Filing Transcript.*

Filed September 14, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.  
Equity. No. 24484.

LEWIS A. GRIFFITH, Executor, Complainant,  
*vs.*  
WILLIAM W. STEWART, Defendant.

Comes now the complainant and moves the court to extend the time for filing the transcript of record an appeal in the  
724 Court of Appeals in the above entitled cause to October 25th, inclusive, and for reason therefor says:

That it was stipulated and agreed between the parties hereto that the cause should be tried in the Court of Appeals on an abbreviated record or abstract in order to lessen expense; that said abbreviated record or abstract of the evidence was submitted more than three weeks ago to counsel for defendant with a request for an agreement with respect to the abstract and any changes therein at as early a date as possible; that complainant has not yet been able to procure said agreement on an abbreviated record or abstract of the evidence; that the time limit for filing the transcript of record in the Court of Appeals will expire September 30th, wherefore it is necessary to save complainant's rights on appeal that the time for printing the record be extended.

CHAS. H. MERILLAT,  
GEO. R. GAITHER,  
*Attorneys for Complainant.*

Sept. 10, 1906.

I Consent:

E. H. THOMAS, *For Def't.*

Service acknowledged Sept. 10, 1906.

E. H. THOMAS.

725 *Order Further Extending Time to File Transcript of Record.*

Filed October 12, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.  
Eq. No. 24484.

LEWIS A. GRIFFITH, Executor, Complainant,  
*vs.*  
WILLIAM W. STEWART, Defendant.

On motion of counsel for complainant, counsel for defendant consenting, it is by the Court this 12th day of October, 1906, ordered

that the time for filing the transcript of record on appeal in the above entitled cause be and the same hereby is extended to November 25, 1906, inclusive.

ASHLEY M. GOULD, *Justice.*

726 *Order Further Extending Time in Which to File Transcript.*

Filed November 15, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24484, Doc. 54.

LEWIS A. GRIFFITH, Executor, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

Counsel for complainant and defendant consenting, it is by the Court this 15<sup>th</sup> day of November, 1906, ordered:

That the time for filing the transcript in the above entitled cause in the Court of Appeals be, and the same hereby is, extended until January 5, 1907.

HARRY M. CLABAUGH,

*Chief Justice.*

We consent:

CHAS. H. MERILLAT,

*Att'y for Complainant.*

E. H. THOMAS,

*Sol'r for Def't.*

727 *Order Further Extending Time in Which to File Transcript.*

Filed December 21, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24484.

LEWIS A. GRIFFITH, Executor, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

Counsel for both sides consenting, it is by the Court this 21st day of December, 1906, ordered that the time for filing the transcript of record on appeal in the Court of Appeals in the above entitled cause be, and the same hereby is, extended to February 15, 1907, inclusive.

HARRY M. CLABAUGH,

*Chief Justice.*

We consent:

C. H. MERILLAT,

*Attorney for Complainant.*

E. H. THOMAS,

*Attorney for Defendant.*

728 *Order Further Extending Time in Which to File Transcript.*

Filed February 1, 1907.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24484.

LEWIS A. GRIFFITH, Executor, Complainant,

*vs.*

WILLIAM W. STEWART, Defendant.

Counsel for both sides consenting, it is by the Court this 1 day of February, 1907, ordered that the time for filing the transcript of record on appeal in the Court of Appeals in the above entitled cause be, and the same hereby is, extended to March 15, 1907, inclusive.

HARRY M. CLABAUGH,  
*Chief Justice.*E. H. THOMAS,  
*For Defendant.*C. H. MERILLAT,  
*For Complainant.*729 *Order Further Extending Time in Which to File Transcript.*

Filed March 11, 1907.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 24484.

LEWIS A. GRIFFITH, Executor, Plaintiff,

*vs.*

WILLIAM W. STEWART, Defendant.

Counsel for both sides consenting, it is by the Court this 11th day of March, 1907, ordered that the time for filing the transcript of record on appeal in the Court of Appeals in the above entitled cause, be, and the same hereby is, extended to April 4, 1907, inclusive.

HARRY M. CLABAUGH,  
*Chief Justice.*

We consent:

E. H. THOMAS,  
*For Def't.*CHAS. H. MERILLAT,  
*For Plaintiff.*

730

*Stipulation as to Exhibits.*

Filed April 1, 1907.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. No. 24484.

LEWIS A. GRIFFITH, Executor, Complainant,

vs.

WILLIAM W. STEWART, Defendant.

It is hereby stipulated by and between Charles H. Merillat, attorney for complainant, and Edward H. Thomas attorney for defendant, that the survey offered in evidence in the above entitled cause and the papers bearing on the genuineness of the signatures involved in the above entitled cause may be produced in the Court of Appeals or in the Supreme Court of U. S. in the originals instead of in the printed transcript of record.

CHARLES H. MERILLAT,

*Attorney for Complainant.*

E. H. THOMAS,

*Attorney for Defendant.*731 *Order Further Extending Time in Which to File Transcript.*

Filed April 2, 1907.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. No. 24484.

LEWIS A. GRIFFITH, Executor, Complainant,

vs.

WILLIAM W. STEWART, Defendant.

Both sides consenting it is by the Court this 2nd day of April, A. D. 1907, ordered that the time for filing the transcript of record in the above entitled cause in the Court of Appeals be and the same hereby is extended to April 10th, 1907, inclusive.

By the Court,

HARRY M. CLABAUGH,

*Chief Justice.*

O. K.

E. H. THOMAS,

*For Def't.*

C. H. MERILLAT,

GEO. R. GAITHER,

*For Complainant.*

732

*Order for Transcript on Appeal.*

Filed September 19, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Equity. No. 24484.

LEWIS A. GRIFFITH, Executor, Complainant,

vs.

WILLIAM W. STEWART, Defendant.

To the Clerk of the Supreme Court of the District of Columbia:

The following parts of the record in this case to be included in the transcript of record to be transmitted to the Court of Appeals are hereby designated by appellant:

February 15, 1904.—Bill of Complainant and Exhibits.

April 5, 1904.—Demurrer.

July 7, 1904.—Demurrer of Defendant overruled.

July 7, 1904.—Justice Anderson's written opinion.

August 5, 1904.—Answer of defendant.

August 15, 1904.—Replication.

Testimony taken, including all exhibits filed, but avoid duplication of those filed with bill of complainant.

February 21, 1906.—Specific performance decreed.

733 February 27, 1906.—Appearance of Archer. Deed, Mortgage and notes.

March 13, 1906.—Supplemental decree.

March 20, 1906.—Motion to vacate decree and affidavits.

March 27, 1906.—Petition and affidavits for rehearing.

March 30, 1906.—Affidavits in opposition to motion for rehearing.

April 2, 1906.—Decree vacated and rehearing awarded.

*Subpoena duces tecum* to Register of Wills, W. R. Smith.

Testimony taken on rehearing and all exhibits filed, but the following papers to be sent up in the original and not copied: Dr. Griffith's account book with his patients; Mayhew deed; Richardson deed; Jim Ball power of attorney; transcript of deeds, headed Peter Randall *et ux* to Henry Randall; Griffith's hand book and checks on Bank of Southern Maryland; photographs put in evidence; Ison's checks; originals of will of Alfred Ball, of long power of attorney, of bond of L. A. Griffith, signed by Alfred Ball, and of renunciation of Alfred Ball as administrator of James Ball's estate, these last four papers to be produced in the Court of Appeals in the original by the Register of Wills of Prince George's County.

July 2, 1906.—Decree of dismissal of bill, appeal noted  
734 and bond fixed.

July 2, 1906.—Time for filing transcript in Court of Appeals extended to October 1, 1906.

Memo.—Bond on appeal approved.

September 14, 1906.—Motion to extend time for filing transcript in Court of Appeals.

September 14, 1906.—Time for filing transcript in Court of Appeals extended.

CHAS. H. MERILLAT,  
GEO. R. GAITHER,  
*Attorneys for Appellant.*

SEPTEMBER 19TH, 1906.

Messrs. E. H. Thomas and James B. Archer, Jr., attorneys for appellees.

GENTLEMEN: I have this day filed the above order with the Clerk of the Supreme Court of the District of Columbia, of which you will please take notice, designating the entire evidence to be transmitted to the Court of Appeals in view of your failure to give me any information with respect to the abbreviated record which I transmitted to you five weeks ago, pursuant to a stipulation entered into between us that the cause should be tried on appeal on an agreed abbreviated record.

CHAS. H. MERILLAT,  
*Attorney for Appellant.*

Service acknowledged September 19, 1906.

E. H. THOMAS.

735 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 734, both inclusive, comprising two volumes, marked respectively "Volume No. I" and "Volume No. II," to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript; in cause No. 24484, In Equity, wherein Lewis A. Griffith, is Complainand, and William W. Stewart, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 8th day of April, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1744. Lewis A. Griffith, executor, appellant, vs. William W. Stewart. Court of Appeals, District of Columbia. Filed Apr. 8, 1907. Henry W. Hodges, clerk.



376

346

ADDITION TO RECORD PER STIPULATION OF  
COUNSEL.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

APRIL TERM, 1907.

No. 1774.

LEWIS A. GRIFFITH, EXECUTOR, APPELLANT,

vs.

WILLIAM W. STEWART.

FILED AUGUST 22, 1907.

In the Court of Appeals of the District of Columbia, — Term,  
1907.

No. 1744.

LEWIS A. GRIFFITH, Executor, Appellant,

vs.

WILLIAM W. STEWART, Appellee.

Appeal from the Supreme Court of the District of Columbia.

Filed August —, 1907.

In the Court of Appeals of the District of Columbia.

No. 1744.

LEWIS A. GRIFFITH, Executor, Appellant,

vs.

WILLIAM W. STEWART, Appellee.

The following, being full text of the cross examination of J. Alfred Ridgeley, and an affidavit on motion for rehearing made by

Wiley O. Ison and filed by appellant (complainant below), is submitted in diminution of the transcript on appeal as a supplement to the transcript on appeal filed herein, this diminution being by consent and stipulation of counsel for both parties, the appellant and the appellee. The Ridgeley testimony is submitted to take the place of the cross examination as shown by the original transcript beginning near the botton of page 295 and ending at the close of said Griffith's redirect testimony as set forth on page 297 of the original transcript.

It is hereby stipulated and agreed between counsel for the respective parties, appellant and appellee, that the following matter, being the full text of the cross examination and redirect & recross examination of J. Alfred Ridgeley and the affidavit of Wiley O. Ison were parts of the record below and on which the cause was heard below and that they shall be and are hereby made parts of the record on appeal and the Clerk of the Court of Appeals is hereby directed to print the same as an addition to and part of the record of this cause on appeal.

JAMES B. ARCHER, JR.,  
*Of Solicitors for Appellee.*

CHARLES H. MERILLAT,  
*Attorney for Appellant.*

J. ALFRED RIDGELEY.

Cross-examination.

By Mr. ARCHER:

Q. Mr. Ridgeley, you haven't any interest in this case, have you?  
A. None at all.

Q. Your connection with it is simply from the fact that you were asked to take some acknowledgements? A. Yes, sir, that is all.

Q. How long have you known Dr. Griffith? A. I have known Dr. Griffith I guess twenty years or more. Ever since he has been down in our county.

Q. How well? A. I know him.

Q. Intimately? A. Yes, sir.

Q. Friend and associate of yours? A. He has often attended me in sickness. I have gone to him for medicine and advice and so on.

Q. Now, Mr. Ridgeley, how do you know that the signature "J. Alfred Ridgeley" to the long power of attorney is your signature?  
A. How do I know about it?

Q. Yes, sir. A. I know it because I put it there myself.

Q. How do you know you put it there? A. I know my own signature.

Q. You know your own handwriting? A. Yes, sir.

Q. Do you remember any of the contents of the long power of attorney? A. Any of the contents of it?

Q. Yes, sir. A. No, sir.

Q. Is there any mark on that paper that you recognize? A. None but my signature and Ball's.

Q. Did you ever notice those ink places on the paper? A. I don't know to my knowledge. I don't know whether I noticed the body part of it or not.

Q. You examined it carefully and the only thing that makes you know it is the signature of Ball and your signature? A. That is Ball's signature and that is mine.

Q. They are the only marks on that paper that make you know that that is your signature? A. No other marks that I can recall.

Q. Examine it carefully and see if you can find any other mark of identification on it? A. No, sir, I cannot see that there are any.

Q. And you can recognize it as you say by these two signatures? A. Yes, sir, by my signature and Ball's signature.

Q. How do you know those signatures if you don't know any other mark on that paper? A. Because I know my signature any place I see it. And I know the circumstances under which this signature was taken to some extent.

Q. You don't recognize any mark on that paper, and your answer that that is your signature is based upon the fact that you know that to be your signature because of the resemblance to your signature? A. Yes, sir, that is my signature.

Q. Because it looks like your signature? A. I know it to be my signature.

Q. Why? A. Because I know my signature wherever I see it.

Q. Suppose somebody wrote it just like yours? A. That would not be very likely. It might be possible.

Q. Suppose I did, would you know it simply because it was your signature? A. I would be very likely to know it if I could bring to mind the circumstances or some circumstances under which it was put there, or under which I had put it there.

Q. But if you don't have any circumstances under which you put it there you might be mistaken? A. It might be possible.

Q. Does that signature attached to that paper look like the other three signatures to which you have testified? A. The other three and this one?

Q. Yes, sir. A. You mean that signature?

Q. Yes, sir. A. They are all alike sure.

Q. Do you see any difference between them? A. Well, there may be some little difference. That would be the difference in the different places and circumstances under which it was made.

Q. Where were you when you signed the power of attorney? A. This power of attorney, I was at Alfred Ball's house. (Witness indicates long power of attorney.)

Q. What makes you think so? A. Because I was there twice and I taken at Ball's house three papers, and at one time his acknowledgement and his signature was put on it in the house and another time it was out under a tree on a wagon. Now, which of the two occasions I don't remember.

Q. You say you don't remember whether that was in the house or out in the yard? A. No, sir.

Q. And there is nothing about that to inform you about that—the signature on the long power of attorney to inform you whether

it was done in the house or out of the house? A. No, sir, I cannot say whether it was the one I took in the house or not.

Q. Do you know any other circumstances to help you to know it was or suppose it was other than your opinion that it looks like yours? A. I know Ball signed his name before me twice. I know the man signed his name. I would not take the acknowledgement unless he did. I know that is the signature that Ball put on there in my presence.

Q. You know that is Ball's signature? A. I know it by looking at it. Now, I know it more particularly in one way because I told him to go back far enough to make his signature before getting to the word "seal." I distinctly remember that he went over in the word "seal" with his signature. I remember telling him to go back far enough.

Q. Did you ever know him to do that in any other paper? A. I don't know that I recall that he did it in any other paper.

Q. What led you to tell him to go back far enough? A. Because usually here they are not accustomed to lines and Ball was right old and if you don't guide them sometimes they will start in the wrong place.

Q. What do you mean by going back far enough? A. Back far.

Q. You mean front when you say back? A. Yes, sir, far enough here. (Indicating.)

Q. You mean far enough front? A. Yes, sir, far enough this way. (Witness indicates on the paper.)

Q. Did you ever know him to do that in any other paper that you acknowledged? A. He might have done it.

Q. You don't recall any other? A. I don't know that I recall any other, but it might have been.

Q. Do you know whether you ever told him to write it far enough front in any other paper? A. I might have done it on more than one paper.

Q. But did you? Do you recall it? A. I don't recall it.

Q. You remember you told him on this one? A. Yes, sir.

Q. How do you remember this one and cannot remember another one? A. This was the first occasion that we were up there.

Q. The first occasion? A. Yes, sir, the first visit that we made there.

Q. You say that on one occasion you went there you took one paper and on the other occasion you took two papers. Now, which was the occasion you took two, the first or second occasion? A. The first occasion.

Q. Do you know anything about the other paper you took his acknowledgement to? A. Do I know anything about it?

Q. Yes, sir. A. Only that I took his acknowledgement to it.

Q. Did you read it to him? A. No, sir, I never read papers to any one only——

Q. Did you read it to yourself? A. No, sir.

Q. So you did not read either one of these papers to yourself? A. No, sir.

Q. So that there is nothing about either paper that would tell you that it was the paper taken on that day except your signature and his signature? A. My signature and his and my remembering now in making out that paper—remembering telling Mr. Ball to start back this way so as to give him room enough to sign without running over into the word “seal.”

Q. But you don't remember whether you told him that more than once or not? A. I don't remember, but to the best of my recollection I only told him once.

Q. Did you tell him when you wrote that signature? (Counsel refers to signature attached to the Jim Ball power of attorney.) A. I don't know that I did. No, sir, I did not.

Q. How do you know that is not the one on which he over-ran the word “seal?” A. I know this is not the one because this is on the 27th day of June and the time I told him was this day, the first visit I was there, on the 4th of June.

Q. You know it was the 4th of June? A. Yes, sir.

Q. You know that because you told him that on the first occasion you were there? A. Yes, sir.

Q. And on the first occasion you were there as a matter of fact did he run back on the word “seal?” A. Yes, sir.

Q. Why didn't you remember when you went back on the 27th of June that he was likely to do that again and tell him again? A. I may have told him.

Q. Do you think you did? A. I don't know.

Q. Do you think you did? A. I don't know.

Q. You don't undertake to say whether you did or not? A. No, sir, I am only saying what I know and not what I think.

Q. You don't know whether you did or not? A. No, sir.

Q. You say those signatures do not look any different to you, or did you say that, from the signature on the long power of attorney—the J. Alfred Ridgeley signature? A. They are my signatures. They may be a little different.

Q. I did not ask you that. We understand that is your opinion about it. A. It looks a little different because there is a larger A—a larger letter. There is where I had room and here is where it ran down over the paper. A man could not have the space.

Q. Which paper is that? A. Way down at the end of the paper. (Witness refers to the long power of attorney.)

Q. And so you made this longer, attached to the Jim Ball power of attorney? A. Made it longer how?

Q. The signature longer? A. I say the letters are larger and all.

Q. Are the letters unusually large? A. No, sir.

Q. Is the signature unusually long? A. No, sir.

Q. Is that the way you are in the habit of writing your signature as attached to the Jim Ball power of attorney? A. Yes, sir.

Q. When did you discover that there was some question about your signatures? A. When did I discover it?

Q. Yes, sir. A. That there was any question about my signatures?



Q. Yes, sir. A. I don't know that I can recall exactly when it was.

Q. How long ago has it been? A. Now, I cannot say; probably a month.

Q. Who told you? A. Who told me?

Q. Yes, sir. A. I don't know as anybody told me particularly. I first—I heard it—heard it discussed and probably talked about down there.

Q. You don't know who told you? A. And afterwards Dr. Griffith told me that.

Q. Dr. Griffith told you? A. Yes, sir.

Q. But you heard it from somebody else first? A. I may have heard it from rumor.

Q. What did Dr. Griffith tell you about it? A. Dr. Griffith told me that it was—an expert had said that the name was forged; that some man, I cannot recall or remember exactly—anyhow there was some question as to my signature.

Q. You don't remember what he told you? A. No, sir.

Q. What did you tell Dr. Griffith? A. I told him there was the papers and I didn't think that would amount to anything.

Q. Were the papers present when he told you that? A. No, sir, I think this was in his office.

Q. And the papers were not there? A. No, sir.

Q. And you did not see them? A. Didn't see what?

Q. Didn't see the papers at that time? A. No, sir, not at that time.

Q. Did you at that time tell him that that was your signature—that you had written your signature to that power of attorney?

A. I might have told him that the paper that was on file was my signature.

Q. Which paper on file? A. I think this is the original paper. Is this the original paper, Mr. Smith? (Witness refers to the long power of attorney.)

Q. When did you see it on file? A. Twice or more.

Q. When? A. At different times.

Q. When? A. I saw it once last night.

Q. Last night? A. Night before last.

Q. What time was it? A. I guess about eight o'clock.

Q. Whereabouts? A. In the office.

Q. What office? A. In the Register's office.

Q. Who was present? A. Mr. Smith.

Q. Who else? A. Dr. Griffith.

Q. Who else? A. Mr. Ambrose.

Q. Who else?

Mr. MERILLAT: Do you mean Mr. Ambrose?

A. Mr. Merillat.

Q. Who else? A. Mr. Roberts.

Q. Who else? A. I don't think there was anybody else.

Q. Was that the first time that you had seen it or the second time? A. I had seen it before that.

Q. You saw it before that? A. Yes, sir.

Q. Do you recall when that was? A. No, sir.

Q. Who was present at that time? A. I don't recollect whether I went over there myself and saw it with Mr. Smith or whether there was anybody with me.

Q. How did you happen to go to look at it? A. I heard that there was some dispute over it.

Q. What length of time has that been? A. I don't know.

Q. Who told you that there was some dispute about it? A. I think I just answered that question.

Q. This was the time you went down by yourself to look at it? A. I might not have been by myself.

Q. Who told you that there was some dispute about it the first time you went to look at it? A. The first time I went to look at it was after I had been here.

Q. After you had been here to testify? A. Yes, sir.

Q. And you went down there because somebody told you that there was a dispute about it? A. I may have gone for that purpose.

Q. What is the fact about it? I only want your best recollection about the matter. A. I may have heard that there was a paper that my signature was in dispute and was on record there in Mr. Smith's office, and I may have gone over there once or twice or more to look at it.

Q. Now, did you hear and did you go to look at it? A. Yes, sir.

Q. From whom did you hear it? A. Hear what?

Q. That there was some dispute about the signature? A. I think I told you. I think I answered that question once. First I heard it through rumor and then Dr. Griffith told me himself.

Q. Now, do you remember who rumored it? A. No, sir, I don't know as I could say.

Q. Do you remember who told you of the rumor? A. I don't know of any particular person.

Q. Where were you *went* Dr. Griffith first told you about it? A. In Dr. Griffith's office.

Q. What were you doing there? A. I probably went there for some medicine. I generally do or very often.

Q. Had he sent for you to come there? A. For any particular purpose; no, sir.

Q. Had he sent for you to come there? A. No, sir.

Q. Why did you say for any particular purpose? A. As near as I can say.

Q. Why did you say for any particular purpose? A. I might have wanted some medicine and he might have said to come down to his office.

Q. Did you go down to his office the next day after that or the same day? A. The next day after what?

Q. After you asked him for some medicine and he told you to come down to his office? A. The next day, I don't remember whether it was.

Q. Where was he when you asked him for some medicine and he told you to come down to his office. A. I don't say that positively. You asked me if I saw Dr. Griffith.

Q. What do you say about that as to whether or not you asked him for some medicine and he told you to come down to his office?  
A. I say I might have asked him.

Q. Do you remember whether you did or not? A. I might have and while I was there with him he told me about the dispute.

Q. But you don't know whether you did ask him or not for some medicine? A. No, sir, I haven't any recollection of Dr. Griffith asking me to come to his office to tell me that.

Q. Were you in his office the first time he told you about that? You said that I think, didn't you? A. Yes, sir, I think I was.

Q. Do you know what time you were there? A. No, sir.

Q. You don't know positively what time you were there? A. No, sir.

Q. It might have been because you wanted some medicine and it might have been because he sent for you? A. It might have been either way and I might have been passing there.

Q. You don't remember how you happened to be there? A. No, sir.

Q. How long ago has it been, Mr. Ridgeley? A. I haven't any recollection of that.

Q. Has it been a month? A. It might have been a week or a month.

Q. Has it been more than a month? A. I don't know. I cannot remember.

Q. Have you any recollection about it? A. No, sir.

Q. It wasn't as much as six months ago, was it? A. I don't know. Hardly. We stopped on the street and were talking.

Q. Was it after or before you heard the rumor that this signature was in dispute? A. It was after that I heard the rumor.

Q. It was after you heard the rumor? A. I don't know whether it was.

Q. Was it before or after you heard the rumor? A. I don't know.

Q. Have you any way of fixing it in your mind? A. No, sir, at this time I have not.

Q. Now, where were you when you heard this rumor; what part of the country? A. I was in Marlboro, I suppose. Very likely in Marlboro.

Q. Well, you spoke of it as a rumor. Was it pretty largely talked about? A. Well, I had heard that there was some dispute over my signatures up here in Washington.

Q. What did you say when you heard it? A. I cannot say what I said.

Q. What opinion did you have? A. I had this opinion, that I know there wasn't any papers up here with my signatures on them that there could be any dispute over.

Q. Any paper that had your signature on it was all right? A. Sure.

Q. Whether you had put it on there or not? A. If it had my genuine signature on there there could be no question about it.

Q. And you said that? A. I don't know whether I did. That is my impression. That is the way of it I think.

Q. That is the impression you made on them? A. Yes, sir.

Q. Now, do you remember saying anything to anybody about it?  
A. I don't remember.

Q. How many times have you seen Alfred Ball write his signatures? A. Three times.

Q. Are you familiar with it? A. Only to that extent.

Q. So you could not be mistaken about it? A. No, sir, I don't think I can be mistaken over those three signatures.

Q. You know Alfred Ball's signature and you would know it wherever you saw it? A. On any papers executed before me I would know it, of course.

Q. Suppose it was a paper that had not been executed before you?  
A. I don't know then but what I would recognize his signatures. Of course, everybody has peculiarities about writing.

Q. You have only seen him write his name twice or three times, have you not? A. Three times.

Q. And yet you claim you would know it whether you saw him—whether you saw him write it or not?

Mr. MERILLAT: I submit the witness did not say that.

Mr. ARCHER: Let the record show it.

A. I say that.

Q. Will you be good enough to pick out from these papers the two signatures that you wrote on the first day that you went up to Alfred Ball's house?

Mr. MERILLAT: The witness has not said that there were two papers. I submit that the counsel has got no right to mislead the witness.

Mr. ARCHER: I have a right to probe this witness and to cross examine him and counsel hasn't any right to advise him about answering the question and I am sure my brother knows he has not.

Mr. MERILLAT: I am sure counsel has no right to mislead the witness.

Mr. ARCHER: I think the court will rebuke me if I do mislead him and Mr. Merillat can make as much capital out of my treatment of the witness as he can by objecting to the question.

Q. Now, I will ask you to pick out the two signatures that you put on those two papers on the day you were down at Mr. Ball's house? A. The first time?

Q. Yes, sir. A. I think my testimony has been taken on that. I could not say exactly. The only way I can identify that is by the dates that they were taken. This is one that was taken first. I know that this was taken there on the first occasion, on the 4th of June.

Q. The long power of attorney? A. Yes, sir.

Q. You know it by the date. Is that the only way you can tell, Mr. Ridgeley? A. The only way I can tell; what are you getting at?

Q. The only way you can tell whether you put your signature

on it on the date of it? A. I know I put my signature on there. I can identify my own signature.

Q. Did you put that on there the day you were there? A. The day I was where?

Q. The first time you went to Mr. Ball's house? A. I don't know whether that was taken at Ball's house.

Q. I ask you to look at the signature and see? A. I don't know where it was taken. I taken a dozen papers, I would not know whether it was taken at his house or not?

Q. You would have to look at the paper itself or the contents of the paper to find out, wouldn't you? A. No, sir, I cannot identify either of the papers by its contents.

Q. How would you be able to tell, by way of signatures? That is the only thing you are going by? A. I am going by my signature to that paper. You give me a paper and ask me where I taken it. I don't know about that.

Q. If it is not the date or the contents of the paper how are you to say that your signature attached to the long power of attorney was taken on the occasion of your first visit there? A. Because I told you that I identified this paper as being one of the papers I taken on my first visit to Ball's house.

Q. How do you identify it? A. By him running over here on the "seal" for one thing, and by knowing his signature and knowing he signed it in my presence and knowing that that is my signature there, and the 4th of June regulates me—the fourth—I don't know about any other hand writing, but the date regulates me—the four inserted is in hand writing. I know that the paper was taken on the 4th because I would not have left the paper with the date blank. If it was blank I would have filled it in there.

Q. So you had to look at the date in order to tell whether or not that was the paper you took on the day of your first visit there and you could not tell by any other way? A. I have not said that. You are answering questions for me.

Mr. ARCHER: Ask the question.

(Hereupon the question was read.)

Mr. MERILLAT: I give notice that I shall move to tax counsel for costs of this trivial cross examination and reiteration.

Mr. ARCHER: I will be glad to pay it.

Q. Are you going to answer that question? A. What is the question.

Q. The question has been read to you twice.

Mr. MERILLAT: Let the question be read to the witness. There has been a good deal of talking and the witness may not have the question. Let the Examiner read the question to the witness.

(Hereupon the question was re-read.)

A. I could tell by it, sir, the 4th of June; it being in there was proof that it was executed on that day, of course. If it had been blank I would have put it in there myself. I saw Alfred Ball put

his signature to this paper. That is the paper I took up to his house.

Q. I will ask that the question be read to the witness again as he has not answered it.

(Hereupon the question was re-read to the witness.)

A. I identify the paper otherwise than by the date in it.

Q. How do you identify it? A. By Ball's signature and by mine.

Q. You identify it as being the paper written on the first day?

A. I identify it as being a paper on the first visit to Ball.

Q. What is there about it which enables you to identify it except by the date? A. My signature on it and Ball's signature on it and the fact of my noticing that he ran up on the seal.

Q. Did you write your signature different on the occasion of your — visit than you did on the occasion of your second? A. I wrote my signature all the same all the time, I think.

Q. How are you able to identify it by your signature as being the first visit you made there to take the papers if that signature is the same as the others? A. I could not specially identify that paper as being the first paper I taken there by my signature alone, of course.

Q. That is what I am trying to get you to say. A. I could not say whether it was the first or the second visit.

Q. What was there about Ball's signatures—— A. Not on this paper. This is the paper I taken there on my first visit. (Witness refers to the long power of attorney.)

Q. What is there about Ball's signature that enables you to identify it as being the signature taken on the day of your first visit? A. This paper I identified as being Ball's signature and I remember him running over on the seal the first time.

Q. Do you remember of his running over on the seal on that paper which I now show you and which I will subsequently identify? A. It looks it, don't it, both cases.

Q. If that is so why may not you have been mistaken and why may not this have been executed on the day you took the acknowledgement there? A. It was not.

Q. Why? A. Because I know it.

Q. What is there about the signature to indicate it? A. In the first place he did not blot the signatures the first day I was there.

Q. Do you know when that signature was blotted? A. Do I know when it was?

Q. Yes, sir. A. I don't know any particular time.

Mr. MERILLAT: I ask it to be noted of record that counsel is not showing the witness any date, but simply showing him the signature and nothing else.

Q. If you don't know when that signature was blotted how do you know it was not blotted after the first day you were down there to take the acknowledgement? A. After the first day?



Q. After it was written. A. I could not tell when that signature was taken. That is signed here.

Q. What is your answer to that question?

Mr. MERILLAT: He wants to know when it was taken.

A. I don't know when that signature was taken.

Q. Why don't you know? A. Because I don't know.

Q. Why don't you know? A. Because I cannot remember what time I taken that signature.

Q. How can you tell when the signature to the long power of attorney was taken? A. I identify that paper as being one of the first papers taken at Ball's house.

Q. How do you identify it? A. I certainly told you that I identify it by Ball's signature, and furthermore because of the fact of it running over here on the seal to a certain extent, and furthermore that is my signature on there.

Q. Is not the signature of Ball on the paper I hold in my hand like the one attached to the long power of attorney? A. Same signature.

Q. Why could not this one have been taken on the first day you went there as well as the long power of attorney which you hold in your hand? A. There were two papers taken there. That might have been one of them.

Q. You don't know whether it was or not? A. Not by looking at the particular signature.

Mr. ARCHER: I have been referring to the Jim Ball power of attorney dated June 27th, 1903.

Q. I show you your signature attached to a paper which is tacked on to the testimony in this case and ask whether or not that was taken on the first, or whether that signature was put there on the first day you went to Ball's house? A. That signature was not put there at Ball's house.

Q. Where was that put there? A. I think that was put there at Dr. Griffith's office.

Q. How do you know that. A. I know it was not put there at Ball's house.

Q. How do you know it? A. Because I know it.

Q. How do you know it. A. Because I took no paper up to Ball's house—all the acknowledgements were typewritten. I took no acknowledgement up to Ball's house where the acknowledgement was written in anybody's hand writing.

Q. Is it not a fact that the paper that is before you has a typewritten acknowledgement attached to it? A. That has got a typewritten acknowledgement there, yes, sir, but if I had taken—if it had been one of the papers taken there my signature would be here and not there. (Witness indicates on the paper.)

(The counsel and witness are now referring to the copy of the short power of attorney attached to the defendant's testimony heretofore filed in this cause and marked for identification as "E. L. W.")

Q. Then you say that this paper was not taken at Mr. Ball's house because the signature is attached in typewriting? A. Yes, sir.

Q. Do you know when that paper was taken and where? A. That paper was taken I think the day after we were up to Ball's house.

Q. Where was it taken? A. I think it was at Dr. Griffith's office.

Q. Why did you require Dr. Griffith to swear to that paper? A. I did not require him to swear to it. A man might bring a dozen papers before me to take the acknowledgements of and I would not know the contents of them.

Q. Is that the reason you made him swear to it? A. I did not make him swear to it. He came to me to acknowledge it.

Mr. MERILLAT: I submit that the witness has answered, and that this is a fair sample of counsel trying to mislead the witness who has stated that he did not try to make him take it.

Mr. ARCHER: I don't care about Mr. Merillat's opinion.

Q. Where were you when that was sworn to? A. In Dr. Griffith's office?

Q. You did not require him to swear to it? A. Of course he swore to it because there is my signature.

Q. Did you swear him? A. Of course.

Q. Why did you? A. Because he came to me to take his acknowledgement to the paper.

Q. Did you make this man swear to it when you took his acknowledgement to it? (Indicating.) A. Who is that?

Q. Alfred W. Ball. A. Yes, sir.

Q. Did you certify that he swore to it? A. Why certainly he swore to it.

Q. Alfred W. Ball? A. This is not the original paper. Just as I said about the different papers, as near as I can remember the papers that were taken up to Dr. Griffith's office were copies or something of that kind. There were no original papers there we had taken the day before.

Q. No original papers were exhibited, were there? A. No, sir, not as I know of.

Q. When you went to get Ball's acknowledgement to the papers, did you swear him? A. Yes, sir.

Q. Put him under oath? A. Yes, sir.

Q. Did you certify that you did swear him? A. When?

Q. When you made that certificate. Did you certify that he was duly sworn? A. Yes, sir, "personally appeared," etc.

Q. Did you certify that he swore to the long power of attorney which you identified as having been made on the first day of your visit there? A. Yes, sir.

Q. Will you be good enough to tell us where you put him under oath? A. Here is his acknowledgement. (Hereupon the witness read from the long power of attorney) "I hereby certify that on this 4th day of June, 1903, before me the subscriber a Justice of the Peace of the said State in and for the said county, personally ap-

peared A. W. Ball, being well known to me as the person who executed the foregoing power of attorney and he acknowledged the same to be his act and deed."

Q. Did he swear? A. Yes, sir.

Q. Did you put him under oath? A. The man holds up his right hand and makes that acknowledgement.

Q. You did not swear him? A. Only to the extent of that oath there.

Q. You did not put him under oath. You did not ask him if he would solemnly swear that he was telling the truth? A. That is not customary.

Q. Did you do that with Dr. Griffith with the paper dated June 4th which is the paper known as the short power of attorney? A. Dr. Griffith did as anybody else does who comes before me and holds up his right hand and I read this form

Q. Did you swear him to it? A. To that extent.

Q. Why didn't you swear Ball to the long power of attorney there. You certify here that he made oath? A. (Witness reads from the certificate attached to the copy of the short power of attorney attached to the former testimony and marked E. L. W.) "I hereby certify that on the 5th day of June, 1903, before me the subscriber a justice of the Peace of the said State in and for the said county personally appeared Dr. L. A. Griffith and made oath in due form of law that the above power of attorney is true and genuine." Yes, sir, Dr. Griffith wanted to make oath to that.

Q. Why did you get him to make oath and not Ball? A. This is an affidavit and that is an acknowledgement, that is the difference.

Q. The fact is because you did not care what they brought to you you would sign? A. Sign what?

Q. Anything they brought to you? A. No, sir.

Q. You signed that without knowing what it was. A. I signed this after Dr. Griffith had made oath before me. That is written there.

Q. You already knew that that was a power of attorney? A. Already knew what?

Q. That this was a power of attorney. A. I had no way of knowing what this paper was when the acknowledgement was taken before me.

Q. You could not identify this paper? A. As being any particular paper I taken no, sir, I could not identify that paper, but I know that oath was made before me.

Q. Why did you allow a man to come before you and swear that a typewritten copy was a true and genuine power of attorney? A. When an oath is made before me by Dr. Griffith or by anybody else I do not know what the contents are.

Q. Did you see any signature attached to that paper except in typewriting before you swore him to it? A. I cannot say that I did.

Q. If you had seen that the signatures attached to it were in typewriting would you have permitted Dr. Griffith or anybody else

to swear that it was a true and genuine power of attorney? A. I don't know as I would.

Q. You would have known that it was a copy by the typewritten signatures? A. Certainly I would.

Q. What other occupation have you, Mr. Ridgeley, besides being a justice of the peace? A. None.

Q. Did you ever work for anybody in any other way? A. Yes, sir.

Q. What sort of work? A. I have done a little painting or something like that.

Q. Have you done any work for Dr. Griffith? A. I have done a little work for the Doctor the last week.

Q. Whereabouts? A. Down at Marlboro.

Q. What kind of work? A. Painting.

Q. What kind of work? A. Painting.

Q. Painting of what sort? A. Inside of a couple of days.

Q. Painting his office? A. Yes, sir.

Q. How long were you engaged in that work? A. A couple of days.

Q. What days, Mr. Ridgeley? A. Last week sometime.

Q. Do you know what days of the week? A. Friday was one of them I know.

Q. Friday was one. A. Yes, sir, and I think Tuesday.

Q. You worked one day and then left off and then worked another day? A. Yes, sir, waiting for it to dry I think.

Q. Did you ever do any painting for anybody else? A. Yes, sir, I have painted the court house down there.

Q. Now, is your place an elective office or an appointive one? A. Appointive.

Q. Who appoints you? A. Appointed by the Governor.

Q. And you have held it how many terms? A. This will be my third term now.

Q. How far do you live from Dr. Griffith's house? A. From Dr. Griffith's house it is I guess about a quarter of a mile.

Q. Have you taken any legal advice about these signatures, Mr. Ridgeley? A. No, sir.

Q. You haven't consulted any lawyer about them? A. No, sir.

Q. When did you last see or read the testimony which you gave at the former hearing of this case? A. When did I last see it?

Q. Yes, sir. A. I don't know. I may have seen it here.

Q. When? A. When did I see the testimony?

Q. Yes, sir, when did you read it or any of it? A. I don't know exactly when it was.

Q. Did you read it today? A. No, sir.

Q. You did not see it at all today? A. No, sir, I did not see it today.

Q. Nobody read it to you today or any portion of it? A. No, sir.

Q. You are sure about that? A. Today?

Q. Yes, sir. A. I am sure about that.

Q. Are you as sure of that as you are of anything else that you have testified to today? A. I don't think anybody has read it to me nor have I read any of it.

Q. When was the last time you did read it? A. I was up here one day last week and I looked it over that day—part of it.

Q. Read your testimony? A. Part of it.

Q. What part of it did you read? A. I don't remember what part.

Q. Do you remember anything you saw in it? A. I don't remember anything distinctly that I saw in it. I just glanced over it.

Q. How much of it did you read? A. Probably I turned the pages over. I may have done that. I did not read all of it. I may have turned the pages over.

Q. Who was present when you read it? A. I think Mr. Merillat was there when I looked over it.

Q. Now, I ask you who else was there. A. I think Dr. Griffith was there. I came up here one day with Dr. Griffith.

Q. Mr. Ridgeley, how did you happen to read your testimony over? A. How did I happen to read it over?

Q. Yes, sir. Q. I was up here to see Mr. Merillat there. I think I was to come up here to see him and I was in his office there and they had several papers there. Mr. Merillat had them looking over them and among them—now, I may be mistaken. I don't know as I did read my testimony over here in this office on Saturday. I was up here on last Saturday. I asked regarding my signatures and so on and was looking over the papers, but I cannot positively remember whether I read my testimony over or not.

Q. You say that was last Saturday? A. Yes, sir, that was last Saturday.

Q. When were you here before that? A. Here?

Q. Were you here any day before that recently? A. I was only here when my testimony was taken before.

Q. At the old hearing of the case? A. Yes, sir, that was the only time I have been here.

Redirect examination.

By Mr. MERRILAT:

Q. When you were up here last week was it not what occurred that counsel went over the case with you? A. Yes, sir.

Q. And that is what you refer to? A. Yes, sir, that is what I refer to. And afterwards I tried to remember whether I went over my testimony, but I don't believe I did. I don't remember.

Recross-examination.

By Mr. ARCHER:

Q. Mr. Ridgeley, were you paid for doing the painting down there? A. I will be.

Q. You have not been paid yet, but you expect to be? A. Yes, sir.

Q. Have you ever done any work for Dr. Griffith before? A. No, sir, that is my first.

Redirect examination.

By Mr. MERILLAT:

Q. Mr. Ridgeley, is it a fact that when counsel asked you what was the date of the paper Alfred W. Ball did sign, all that they showed you was simply the signature? A. The signature and nothing more.

Mr. ARCHER: There is no question about it. I did it purposely and deliberately.

Q. Are you able to remember when only seeing the signature and nothing more to state the dates of the various acknowledgements that were taken before you? A. No, sir, certainly not.

Q. At the time the acknowledgements are taken are you careful to see the dates and do you know the dates are true? A. Yes, sir, I know it on all occasions.

Q. Was there any occasion why you should mis-date any paper? A. No, sir.

Q. Was there any suggestion made to you of a mis-dating of any paper? A. No, sir.

Q. I would like to ask you if it is not the fact that at the time you took the two acknowledgements of Alfred W. Ball Dr. Stewart drove up with Mr. Leapley? That is, at the time you took those first two acknowledgements?

Mr. ARCHER: Objected to as leading and suggestive.

A. Yes, sir.

Q. That was the occasion on which you took the two acknowledgements? A. Yes, sir.

Recross-examination.

By Mr. ARCHER:

Q. Where were you when they drove up? A. Where was I? I think I was out in the yard sitting in Dr. Griffith's buggy.

Q. Where was Dr. Griffith? A. I think Dr. Griffith was in the house.

Q. Was anybody with him? A. Anybody with him?

Q. Yes, sir. A. With Dr. Griffith?

Q. Yes, sir. A. I could not say.

Q. Do you recall any other acknowledgement you took about that day? A. No, sir.

Redirect examination.

By Mr. MERILLAT:

Q. There is one other question I wish to ask. Before this acknowledgement of Alfred W. Ball was taken and before he signed



did you go into the house with Dr. Griffith and talk with Ball or did Dr. Griffith go in alone? A. To take this acknowledgement (Witness indicates the long power of attorney.)

Q. Yes, sir, before Ball signed. A. As near as I can remember Dr. Griffith went into the house first and then afterwards he came out and got me.

Q. And then Ball acknowledged it? A. Yes, sir.

Q. Was this all done in the usual way you have always done your work? A. Yes, sir.

Recross-examination.

By Mr. ARCHER:

Q. There was nothing at that time to suggest anything different from the usual way? A. No, sir.

Q. You had known Dr. Griffith for years and had no reason to suspect him of anything wrong? A. No, sir, not a thing.

Q. You were willing to trust him like anybody else? A. Yes, sir.

Q. And there was no occasion for you to pay any special heed about what was going on? A. No, sir.

Redirect examination.

By Mr. MERILLAT:

Q. Have you any reason to doubt him now? A. None.

Mr. ARCHER: I object to that. The witness knows nothing of the testimony, but I suppose it would be the same thing if he did.

Filed Mar. 30, 1906. J. R. Young, Clerk.

DISTRICT OF COLUMBIA, ss

Willey O. Ison being first duly sworn deposes and says: That he is employed in the office of the Treasurer of the United States; that for some years a part of his official duties has been the special examination of signatures coming to the office of the Treasurer, and the examination and comparison of signatures in connection with his official duties; that there have been referred to himself as well as others of said office very many signatures for comparison and report; that by reason of this fact he has considerable familiarity with the subject of handwriting and comparisons thereof; that for more than five years he has had the foregoing work to do in connection with his other work and that at present he has charge, in the Division of the General Accounts, of the verification of signatures; that he considers, that generally speaking, there will be more variations in the signatures and the details thereof of illiterate persons and persons seldom writing than there will be ordinarily in the signatures of other persons; that he further considers the conditions and circumstances (including the light and state of mind, physical condition and the position in which the writing is done)

in which signatures are written will result in variations more or less great according to the difference of circumstances and conditions; that in order to arrive at a just conclusion it is desirable to have as many specimens of admittedly genuine handwriting as possible and that the fewer the specimens the greater the difficulty of determination; that he has examined freely and un-influenced by any statement the power of attorney and the will signed by Alfred W. Ball and in the Register of Wills office at Upper Marlboro and the receipt and ratification signed by Alfred W. Ball, in the Clerks office of the Supreme Court of the District of Columbia; that he believes and is confidently of the opinion that the body of the ratification and the parts inserted in the power of attorney were written by one and the same person; that he does not believe that the person who wrote the interlineation in the power of attorney and who wrote the body of the ratification, wrote the signature Alfred W. Ball in any of the three papers referred to; and that the person who wrote J. Alfred Ridgeley on the power of attorney did not write the interlineation on the power of attorney or the body of the ratification; that with respect to the signatures of Alfred W. Ball in the three papers there is more uncertainty; that he found more marks of dissimilarity between the signature to the will and the signature to the power of attorney than he did between the signature to the will and the signature to the ratification and likewise more marks of dissimilarity between the signature to the will and the signature to the power of attorney than he did between the signature to the ratification and the signature to the power of attorney or to the will either; that he examined the signature to the ratification after examining the signature to the other two papers at Marlboro; that at first examination of the two papers at Marlboro, he was of opinion that the signatures were not written by the same person; that after examination of approximately three hours at Marlboro he found reason to modify his opinion and observed points of similarity and changed, to an extent, his opinion; that later he examined the signature to the ratification and found still further reason to modify more greatly his opinion and to believe that all three signatures perhaps might have been written by the same person; that the signature to the ratification in his opinion served as a connecting link between the other two papers and caused him to be more of the opinion that all three signatures might have been written by the same person; that if the papers bearing the three signatures of Alfred W. Ball had been presented to a bank cashier after Alfred W. Ball were dead he would have considered the cashier justified in honoring all three of the signatures if the signature to the will be genuine and provided a person of undoubted veracity stated that he had seen Alfred W. Ball sign said papers. That the signature to the ratification helps very materially the identification of all three papers as perhaps written by the same person but possibly under different conditions; that an examination by means of the original papers is better than an examination based on photographs; that it is impossible to base absolute judgment in all cases especially so in a case where you have only exhibits of the three signatures in

20      LEWIS A. GRIFFITH, EXECUTOR, VS. WILLIAM W. STEWART.

question; that it would have helped out very materially had affiant had letters or other papers written undoubtedly by the person whose signature was in question; that affiant was informed, however that in his examination he must base it solely upon the three signatures; that by reason of the insufficiency of the date affiant is unable to state his opinion with any more certainty than in the foregoing.

WILLEY O. ISON.

Subscribed and sworn to before me this 30th., day of March,  
A. D. 1906.

CLAUDE D. THOMAS,

*Notary Public, D. C.*

[Endorsed:] No. 1774. Lewis A. Griffith, Executor Appellant  
*vs.* William W. Stewart Addition to Record per Stipulation of  
Counsel. Court of Appeals, District of Columbia. Filed Aug. 22  
1907. Henry W. Hodges, Clerk.

SECOND ADDITION TO RECORD PER STIPULA-  
TION OF COUNSEL.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1908.

No. 1774.

LEWIS A. GRIFFITH, EXECUTOR, APPELLANT,

vs.

WILLIAM W. STEWART.

FILED DECEMBER 19, 1907.

In the Court of Appeals of the District of Columbia.

No. 1774.

LEWIS A. GRIFFITH, Executor, Appellant,

vs.

WILLIAM W. STEWART, Appellee.

*Stipulation.*

It is hereby stipulated by and between the parties to the above entitled cause that the survey offered in evidence at the trial herein and attached to this stipulation may be made an addition to and part of the record on the appeal to this Court in said cause.

CHARLES H. MERILLAT,

*Attorney for Appellant.*

E. H. THOMAS,

*Attorney for Appellee.*

Filed Feb. 15, 1904.

J. R. YOUNG, *Clerk*.

(Here follows diagram.)

[Endorsements on back of diagram:]

No. 1774.

LEWIS A. GRIFFITH, Executor, Appellant,

*vs.*  
WILLIAM W. STEWART.

Second Addition to Record per Stipulation of Counsel.

Court of Appeals,  
District of Columbia.

Filed

Dec. 19, 1907

Henry W. Hodges,  
Clerk.

GRIFFITH *vs.* STEWART.

Complainant's Exhibit A 24.

Filed

Feb. 15, 1904

J. R. Young  
Clerk.





WEDNESDAY, *February 5th*, A. D. 1908.

No. 1774.

LEWIS A. GRIFFITH, Executor, Appellant,

vs.

WILLIAM W. STEWART.

The argument in the above entitled cause was commenced by Mr. C. H. Merillat, attorney for the appellant, and was continued by Messrs. J. B. Archer, Jr., and E. H. Thomas, attorneys for the appellee, and was concluded by Mr. George R. Gaither, attorney for the appellant.

On motion both sides are allowed to file additional authorities herein if so advised.

No. 1774.

LEWIS A. GRIFFITH, Executor, Appellant,

v.

WILLIAM W. STEWART.

*Opinion.*

(Mr. Justice VAN ORSDER delivered the opinion of the Court:)

This suit was brought in the Supreme Court of the District of Columbia by the appellant, plaintiff below, as executor of the estate of one Alfred W. Ball, against the appellee for the specific performance of a contract. It appears that in June, 1903, the appellee, referred to hereafter as defendant, entered into a contract to purchase the farm of Ball, situated in Prince George County, Maryland. The contract was executed on the part of Ball by plaintiff Griffith, who was acting under a power of attorney from Ball appointing Griffith as his agent for the purpose of negotiating the sale of said land. The contract provided that \$500 should be paid in cash on the purchase price, and the balance of one-half of the purchase price should be paid on November 7, 1903. The remaining one-half of the purchase price was to be paid in five equal annual instalments, with interest thereon at 6 per cent per annum. The contract provided that Ball should remain in possession until November 7, 1903, when a deed should be executed by him and delivered to defendant, and defendant should execute notes to be secured by a purchase mortgage on the land to Ball to secure the deferred payments. The \$500 was paid on the signing of the contract, but defendant failed to make the payment due on November 7th.

On November 5th, two days before payment under the contract became due, Ball died, leaving a will in which the plaintiff was named as executor and by its terms vested with full and complete power over the entire estate of Ball, real, personal, and mixed. The will was duly presented for probate in the Probate Court of Prince George County, Maryland. The court ordered plaintiff to carry out

this contract, and in compliance with said order, plaintiff demanded performance of the same by defendant, which was refused. Upon such refusal, plaintiff executed a deed and tendered it to defendant, demanding a compliance with the terms of the contract. Defendant still refused to carry out the terms of the agreement. Plaintiff, as executor, then instituted this suit to compel defendant to specifically perform the conditions of the contract.

At the conclusion of the trial, the court, on February 21, 1906, entered a decree in favor of plaintiff, in which the court held, among other things, that the agreement in complainant's bill, dated the 5th day of June, 1903, ought to be specifically performed and be carried into execution, and, in accordance with this finding, the court directed plaintiff to execute and deliver a deed to the defendant and the defendant to execute and deliver the notes and a mortgage, as provided for in the contract. On March 13, 1906, the court, upon a showing that defendant refused to comply with the terms of the decree, entered judgment against the defendant for the amount of the purchase price then due, and appointed a trustee to receive the deed from plaintiff and execute the notes and mortgage called for in the decree to be executed by defendant.

On March 20, 1906, counsel for defendant filed a motion to vacate the decree and for a new trial. This motion was allowed and a rehearing granted, upon which the court entered the following decree: "The decree heretofore entered in this cause having been vacated, new testimony taken, and a rehearing had, the court is of opinion that the heirs and devisees of Alfred W. Ball are indispensable parties and that the deed tendered by the complainant was insufficient to pass the title, for which reasons alone the former decree was erroneous, and the bill must be dismissed. It is by the court this 2d day of July, 1906, adjudged, ordered, and decreed that the said bill be and the same is dismissed with costs to be taxed by the clerk." From this decree plaintiff appealed to this court. The errors assigned by plaintiff are as follows:

"1. That the lower court erred in vacating its decree in favor of appellant (plaintiff below) and making a final decree in favor of appellee.

"2. That the court below erred in holding that the heirs were indispensable parties, and that for this reason its decree in favor of complainant was erroneous."

It will be observed that in the decree appealed from, the court dismissed the bill of plaintiff on the ground *alone* that the heirs were not made parties, and that the executor had no power to execute a deed for the land in controversy.

The material part of the will of Ball, under which plaintiff acquires his authority to act, reads as follows: "I direct, authorize, and empower Dr. Lewis A. Griffith my executor herein named, to have full and complete power and authority over my entire estate, real, personal, and mixed of every kind and description and wherever being or situate, and I hereby further direct, authorize, and empower him, the said Lewis A. Griffith, my executor, to sell my real estate of which I may die seized and possessed at the time of my death

wherever the said real estate may be situate at public sale after one month's notice by due publication of said sale and of the time, place, and manner of said sale, the said real estate to be sold upon such terms and conditions as my executor shall deem proper and expedient." The testator then devises the proceeds derived from the sale of his real and personal property to various persons and charities named in the will.

It is urged by counsel for plaintiff that, under this provision of the will, the legal title to all the estate of which Ball died seized passed to the plaintiff as executor. We are impressed with the force of this contention. No part of the real estate of Ball was devised to his heirs. The legal title to the property belonging to the estate of Ball never passed to his heirs. What passed to the devisees under the will was the proceeds that should be derived from the sale of his property, real and personal. The real estate not only passed to the executor, but minute directions were given as to its disposition. Where such trusts and powers are vested in an executor, as appear from the terms of the will in question, the legal estate passes to the executor and not to the heirs. The trust would be an empty and impotent one if, after vesting in the trustee the power to sell, under specific directions as to how the sale shall be conducted and the proceeds distributed, no power is vested in the trustee to pass title. Such is not the law. It has been held by this court in the case of *Rathbone v. Hamilton*, 4 App. D. C., 475, that where the will directed the executor to sell the real and personal estate and distribute the proceeds in a certain manner, the legal estate vested in the executor by implication. The court in its opinion said: "It has been contended by the plaintiff here, the present appellant, that even assuming that Mrs. Elkin had power to dispose of the property by will, the executor named in the will had no power of sale, and that the sale made by him, therefore, was simply void. But in this we do not agree. If the right to make the devise of the estate existed, the testatrix directed her property, real and personal, to be sold, and after deducting funeral and other expenses, she directed how the proceeds of the sale should be distributed and paid out. The making of this distribution was a proper duty of the executor; and it is clear, we think, that the executor named in the will would have power to sell and convey the real estate, as he would have of the personal estate, raised by necessary implication. This would seem to be the settled construction of similar devises or directions to sell without express power conferred. *Magruder v. Peter*, 5 Gill & John., 217; *Peter v. Beverly*, 10 Pet., 532; *Taylor v. Benham*, 5 How., 233." Thus, it has been held in this jurisdiction that, even where no authority was conferred upon the executor by the terms of the will to convey the real estate, where the will provided that it should be sold and the proceeds distributed by the executor, the power of the executor to convey will be implied. It seems to be well settled that such authority may arise by implication, when necessary to properly execute the conditions of a trust. In *Doe, Lessee of Poor, v. Considine*, 6 Wall., 458, the court said: "When a trust has been created, it is to be held large enough to enable the trustee to accomplish the objects of its creation.

If a fee simple estate be necessary, it will be held to exist though no words of limitation be found in the instrument by which the title was passed to the trustee, and the estate created." The rule is well expressed in 2 Jarman on Wills, 156: "Trustees take exactly the estate which the purposes of the trust require; and the question is not whether the testator has used words of limitation, or expressions adequate to carry an estate of inheritance, but whether the exigencies of the trust demand the fee simple, or can be satisfied by any and what, less estate." In the case at bar, the directions to the executor to sell and dispose of the real estate are most explicit, and while the will does not in terms confer upon the plaintiff, as executor, the power to convey the real estate, the power to sell and distribute the proceeds implies the power to convey, in order that the proceeds may become available for distribution under the will.

This suit was brought by the executor and former agent of the decedent. The land is in Maryland, and it is a Maryland contract. The laws of that State must govern in ascertaining the rights of the parties. Sec. 103, art. 93, of the Maryland Code provides, in part: "Executors and administrators shall have full power to commence and prosecute any personal action whatever, at law, or in equity, which the testator or intestate might have commenced and prosecuted, except actions of slander." A similar provision is contained in sec. 327 of the Code of the District of Columbia. Sec. 81, art. 93, Code of Maryland, provides: "The executor or administrator, including the administrator *de bonis non*, of a person who shall have made sale of real estate, and have died before receiving the purchase money, or conveying the same, may convey said real estate to the purchaser, and his deed shall be good and valid in law, and shall convey all the right, title, claim and interest of such deceased person in such real estate as effectually as the deed of the party so dying would have conveyed the same; provided, the executor or administrator of the person so dying shall satisfy the Orphans' Court granting him administration that the purchaser has paid the full amount of the purchase money." The above statutes of Maryland, applicable to this case, invest an executor with full power to bring and prosecute any personal action, either at law or in equity, that the testator could have commenced and prosecuted. They also authorize an executor to bring an action to enforce the specific performance of a contract for the sale of real estate made by the testator during his lifetime, and to execute a conveyance that will pass the legal title to such real estate. The statutes contain no provision for the joining of the heirs as parties plaintiff in such an action, but declare in express terms that the executor shall bring personal actions in his own name.

The action here is one *in personam*, and was properly brought in this District, where defendant resides, and where personal service could be secured. In *Hart v. Sansom*, 110 U. S., 151, the court said: "Generally, if not universally, equity jurisdiction is exercised *in personam*, and not *in rem*, and depends upon the control of the court over the parties by reason of their presence or residence, and not upon the place where the land lies in regard to which relief is sought. Upon a bill for the removal of a cloud upon title, as upon a

bill for the specific performance of an agreement to convey, the decree, unless otherwise expressly provided by statute, is clearly not a judgment *in rem*, establishing a title in land, but operates *in personam* only, by restraining the defendant from asserting his claim and directing him to deliver up his deed to be cancelled or to execute a release to the plaintiff. Langdell Eq. Pl. (2d ed.), secs. 43, 184; *Massie v. Watts*, 6 Cranch, 148; *Orton v. Smith*, 18 How., 263; *Vandever v. Freeman*, 20 Tex., 334." The same rule was announced by this court in *Stone v. Fowlkes*, 29 App. D. C., 379.

We are of the opinion that, as to the particular part of the estate of Ball involving the land in question, the sale effected a conversion, and thereafter Ball held the land as trustee for defendant; that, upon the execution of the contract, Ball's interest, as represented by the unpaid balance of the purchase price, became personalty or a *chose in action*, and passed to the plaintiff executor as such. The \$500 cash payment was, by the express language of the contract, a part of the purchase price. Ball retained possession to secure the payment of the balance of one-half of the purchase price before executing a formal conveyance to the defendant. Under the sale, the land became the property of defendant, and the agreed purchase price became the property of Ball. In equity, Ball held the land as trustee for defendant, and defendant held the purchase price as trustee for Ball. If the contract had been performed before Ball's death, the purchase price, with the securities for the deferred payments, would have passed as personalty to Ball's representative. Ball died before the date for performance arrived. Hence, the contract, a mere *chose in action*, passed to plaintiff, as executor. Defendant, under the contract, is now bound to turn over the purchase price to plaintiff as the personal representative of the vendor, and plaintiff is bound to pass to defendant the legal title to the land, which was held in trust for him by Ball until his death, and since that time by plaintiff, as Ball's personal representative. In the case of *Lewis v. Hawkins*, 23 Wall., 119, where Hawkins purchased certain lands from Lewis, giving his promissory notes payable at a future date, and Lewis, in return executed a bond for a deed, the court said: "Upon the execution of the notes and the title bond between Lewis and Hawkins, Lewis held the legal title as trustee for Hawkins, and Hawkins was a trustee for Lewis as to the purchase money. Hawkins was *cestui que trust* as to the former and Lewis as to the latter. The seller under such circumstances has a vendor's lien, which is certainly not impaired by withholding the conveyance. The equitable estate of the vendee is alienable, descendible, and devisable in like manner as real estate held by a legal title. The securities for the purchase money are personalty, and in the event of the death of the vendor go to his personal representative." The rule of law, applicable where notes and a bond were exchanged to secure ultimate performance, will apply with equal force to a contract between the parties for the same purpose. In other words, a contract of sale of land converts the estate of the decedent into personalty, over which the personal representatives have full control. *Longwell v. Bentley*, 23 Penn., 99.

It is urged by counsel for defendant that the contract was not

ratified by Ball in the manner provided for in the power of attorney from Ball to plaintiff. The power of attorney, after appointing plaintiff as Ball's agent to negotiate the sale of the land in question, says: "I also agree to sign the contract in writing ratifying and approving of the sale to be made of the said real estate, provided the sum of four hundred dollars be paid to me." Instead of signing the contract, Ball ratified the sale by the following instrument in writing:

"JUNE 19, 1903.

"I, Alfred W. Ball, having received from my duly authorized agent and attorney, Dr. L. A. Griffith, the sum of four hundred dollars, do hereby ratify and confirm the sale made by him to W. W. Stewart of my real estate near Meadows, Pr. Geo. County, Md. This is with the understanding that if said sale is consummated and one-half of the purchase money be paid cash, that Dr. L. A. Griffith, my agent and attorney, shall pay out of his commission one-half of the cost of surveying and attorney's fee—the other half by W. W. Stewart—otherwise I am to pay the cost of surveying and attorney's fees.

"ALFRED W. BALL."

With this provision in the power of attorney, ratification by Ball became necessary in order to make the conditions of the contract binding upon him. It is not clear just how defendant can avail himself of the failure of Ball to sign the contract as a defense, when Ball not only ratified the contract by the above instrument, but is here affirming it by his legal representative. The ratification by a separate instrument in writing has the same binding effect against Ball as his signature to the contract itself would have had. Since, therefore, this provision in the power of attorney was inserted for the purpose alone of connecting Ball with the agreement in such way that the contract could be enforced against him, and as no effort has been made, either by Ball or his legal representative to evade the contract, the ratification is sufficient.

It is also contended by counsel for defendant that the contract was an optional one and can not be enforced for lack of mutuality. It contains the following provision: "In case the remainder of the first half of the purchase price be not paid on the 7th day of November, then the \$500, so paid to the said Griffith, is to be forfeited and the contract of sale and conveyance to be null and void and of no effect, otherwise remain and be in full force." It is insisted that defendant had no contract with either Griffith or Ball unless he elected to pay the balance of one-half of the purchase price on the day named in the contract. It is well settled that, when the amount paid in cash is stipulated to apply on the purchase price, and no specific provision appears authorizing the vendee to elect to forfeit the contract, a provision such as the above will permit the vendor, upon the failure of the vendee to comply with his agreement, to declare a forfeiture, but no such right attaches to the vendee. In *Hazleton v. Le Duc*, 10 App. D. C., 379: this court considering a contract similar to the one here under consideration, said: "The contract in this case recites that appellee's attorney, who signed it, had received of the defendant 'the sum of two hundred dollars on account of the purchase



money,' of the real estate in question, 'this day sold to him (appellant) by me (appellee).' The terms of the sale are set forth, and there is added 'terms of sale to be complied with in fifteen days or deposit will be forfeited.' Immediately following the signature of appellee by his attorney, and on the same paper, is the following undertaking, signed by appellant: 'I agree to make the above-mentioned purchase on terms as stated.' The only construction that can reasonably be put upon this language is that the parties intended and understood that there was a then present sale of the property; that appellee agreed to sell and appellant agreed to purchase on the terms mentioned in the contract. The two hundred dollars were not paid to buy an option to purchase within fifteen days, but as a part of the purchase money for the property then purchased by appellant. To construe this instrument to be an option to purchase would require the rejection of the language used in it, and the substitution therefor of words of different meaning. Had the memorandum signed by the appellant read, 'I agree to elect to make the above mentioned purchase on terms as stated within fifteen days, or forfeit the deposit made,' it would have been an option to purchase. The memorandum which he did sign is of a very different signification from the one supposed. \* \* \* These words were inserted for the benefit of the vendor, and gave him the option, if the terms of the sale should not be complied with in fifteen days, of treating the contract as void and retaining the two hundred dollars, or treat it as valid and sue for the balance of the purchase money, or for such damages as he might suffer from a breach of the contract by the vendee." It seems to be the well settled rule that where a clause is inserted in a contract, such as the one here in question, it is placed there for the benefit of the vendor, and affords him the option, either of declaring the contract forfeited upon failure to comply with its terms by the vendee, or to enforce the contract. Fry on Specific Performance, sec. 118; Dana v. St. Paul Investment Co., 42 Minn., 194; Dooley v. Watson, 1 Gray (Mass.), 415; Wilcoxson v. Stitt, 65 Cal., 596.

In Mason v. Caldwell, 5 Gilman (Ill.), 193, where suit was brought for the specific performance of a contract to convey real estate, the bond for the conveyance contained the following clause: "But should the said John R. Caldwell, or his assignee, fail to pay the said sum of money, specified in said notes, within ten days after the same become due, he hereby forfeits all claim to said lots, and all moneys paid thereon; and this bond, in such event, shall be void, both in law and equity, and the title to said lots shall continue in the original proprietor, as if no sale had been made." The court in its opinion said: "The defendant contends that he can take advantage of this clause, and because he did not pay the money as he agreed to do, he is exonerated from paying it at all. It is argued that because the obligee, in the event of nonpayment, may treat the bond as determined, mutuality requires that the obligor should have the same privilege. This argument refutes itself. It is as much a *felo de se*, as it would make the bond. To admit the defendant's position is to leave everything in his own hands. It allows him to

defeat or make the bond operative, as may best subserve his interest, without any discretion on the part of the obligee. It converts the bond into a naked proposition absolutely binding on the seller, but which the purchaser may accept or reject by the payment or nonpayment of the money. By thus putting the entire control in the hands of the latter, the mutuality is destroyed. It was the undoubted intention of both parties, when they inserted this clause, to provide a penalty to insure a prompt performance by the purchaser. By performance he leaves no discretion in the hands of the obligee, but has a right to enforce the bond, while, if he does not, he agrees to leave it optional with the other party to avoid the contract or not. Here was a real mutuality; for the purchaser had the first discretion, and if he placed himself in the power of the other party, it was by his own voluntary neglect to pay the money, as he had bound himself to do, and it was but a just penalty for violating his obligation."

In the case at bar the option clearly was one running in favor of the vendor. There was no lack of mutuality. Defendant imposed upon himself the duty of making payment, as he had agreed to do. Compliance on his part vested him with power to compel specific performance had plaintiff failed to respond to the obligations imposed upon him by the contract. The contract was one for the purchase of real estate. Defendant was in position to prevent plaintiff from taking advantage of the option by making payment and executing the notes and mortgage, as he had agreed to do. He can not, however, come into a court of equity and justify his own default by assuming to himself a right that belonged exclusively to the plaintiff. No doubt, if plaintiff had elected to have availed himself of the option, it would have been most satisfactory to defendant, as it would have relieved him of any liability for his own default; but, since plaintiff is here insisting upon a full performance of the contract, defendant can not avail himself of the discarded option of plaintiff to defeat the action which plaintiff in the exercise of his rights elected to bring.

It is urged that time is of the essence of this contract, and, as plaintiff was not in position to perform his part of the agreement on November 7, 1903, he is thereby estopped from bringing an action to compel specific performance on the part of the defendant.

Time may be of the essence of a contract to purchase real estate. It was of the essence of this contract. If defendant had appeared on the 7th of November and tendered performance, and plaintiff had failed to comply with the terms of the contract within such reasonable time as he could, owing to the unexpected contingency arising from the death of Ball, he would have a different standing in a court of equity. On the contrary, the evidence discloses that defendant not only made no effort to comply with his agreement, but he admits that at that time, he had abandoned all intention of complying with its terms. Under these circumstances he is not in position now to come into a court of equity and defend against the enforcement of his contract on the mere presumption that, owing to the contingency arising from Ball's death, of which he admits he had no knowledge on November 7, 1903, plaintiff was not in position to carry out his

part of the agreement. Counsel for defendant rely upon the rule announced by the Supreme Court in *Marble Co. v. Ripley*, 10 Wall., 339, where the court said: "When, from personal incapacity, the nature of the contract, or any other cause, a contract is incapable of being enforced against one party, that party is equally incapable of enforcing it specifically against the other, though its execution in the latter way might in itself be free from the difficulty attending its execution in the former." Defendant might be in position to invoke this rule had he tendered performance and found plaintiff not only unprepared to carry out his part of the agreement, but unable to do so. But that is not this case. One party can not refuse or fail to do his part at the proper time and defend against the action of the other party by proving contingencies that might have prevented the other party from complying with his part of the agreement. One party can not make his own negligence the basis for defeating the other party. When one party has been negligent in performing his part of the agreement, he is estopped from coming into a court of equity and basing his defense upon contingencies that might have prevented the other party from keeping his agreement had he been called upon to do so.

Assuming, however, that plaintiff was not in a position on November 7, 1903, by reason of the death of Ball, to carry out his part of the agreement, fortuitous circumstances of this kind, over which plaintiff had no control, will not defeat the right of recovery, or the enforcement of specific performance. In the case of *Brown v. Slee*, 103 U. S., 828, where the court had under consideration a contract providing for the repurchase of certain land within a given date, the court said: "It is claimed on the part of the appellants, however, that to enable the executors to recover they must prove 'both an election to sell and the delivery or tender of a deed on the day fixed for performance.' As we have already shown, it needed no tender of a deed on the day to require Brown to repurchase. It was enough if, before the expiration of the time, the executors made their election that he should do so, and signified it to him in proper form. That being done, the rights of the parties respectively under the contract were fixed. Brown became bound to repurchase and pay the money, and the executors to receive the money and reconvey. Either party could then require the other to perform, and neither could insist on the default of the other, so long as he himself was behind in his own performance. Brown could not demand a deed until he tendered the money, and the executors could not require the money until they had offered a deed. Neither party offered to perform on the day, and, therefore, one was as much in default as the other. Such being the case, either party, after relieving himself from his own default by performance or an offer to perform, could require the other to perform within a reasonable time. Neither could insist that the other had lost his rights under the contract until he had himself done what he was bound to do. The failure of both parties to perform on the day was equivalent to a waiver by each of the default of the other. The executors did offer to perform within a reasonable time after the day, and we think are entitled to recover." This, we think, applies directly to the case at bar. While both parties failed to perform on

the 7th day of November, 1903, the failure of each "was equivalent to a waiver by each of the default of the other." Plaintiff, owing to the contingency caused by the death of Ball, was unable to perform his part of the agreement. As soon as possible, and within a reasonable time, he secured proper authority, and tendered performance, and under these conditions, is entitled to an enforcement of the contract.

It is contended by defendant that the real purchaser in this case was the Maryland Oil Company, and that defendant in making the contract was acting as its agent. There is a conflict in the evidence on this point. We think the defendant has failed to establish the fact that he disclosed his agency, if one existed, either to plaintiff or Ball at the time the contract was made. It is admitted that about the time when the payment was to be made, November 7, 1903, when defendant had decided to abandon his contract, he notified plaintiff that he was not the real purchaser, but only the agent of the oil company. This was too late. It was the duty of the defendant to have disclosed his agency at the time the contract was made. He could not make a contract of which he could avail himself if it proved profitable, and, by concealing his agency, disclaim if it proved unprofitable. The trial court found against this contention of the defendant, and we agree with that conclusion. It is supported by the evidence.

A number of other objections of minor importance were advanced by counsel for defendant, which we have not deemed of sufficient importance to consider at length. Inasmuch as the Supreme Court of the District in its original decree found generally for the plaintiff upon all the issues involved in the case, and upon rehearing vacated that decree on the ground alone of defect of parties plaintiff, the two decrees, when considered together, are equivalent to a finding for the plaintiff on the facts. We have carefully examined the evidence disclosed in a voluminous record, and agree with the conclusion reached by the lower court. For the error committed in granting a rehearing upon the sole ground that the heirs of Ball should have been made parties plaintiff, the judgment is reversed, with costs, and the cause remanded with instructions to enter judgment for the plaintiff, as prayed for in the bill. Reversed.

*TUESDAY, March 31st, A. D. 1908.*

No. 1774. January Term, 1908.

LEWIS A. GRIFFITH, Executor, Appellant,

vs.

WILLIAM W. STEWART.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged,

and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the said Supreme Court with instructions to enter a decree for the plaintiff, as prayed for in the bill.

Per MR. JUSTICE VAN ORSDEL,  
March 31, 1908.

TUESDAY, April 7th, A. D. 1908.

No. 1774.

LEWIS A. GRIFFITH, Executor, Appellant,  
vs.  
WILLIAM W. STEWART.

On motion of Mr. J. B. Archer, Jr., of counsel for the appellee in the above entitled cause, It is ordered by the Court that said appellee be allowed an appeal to the Supreme Court of the United States and the bond to act as supersedeas is fixed at the sum of twelve thousand dollars.

*(Bond on Appeal.)*

Know all men by these presents, That we, William W. Stewart, as principal, and United Surety Company, a corporation, of Baltimore, Maryland, as surety, are held and firmly bound unto Lewis A. Griffith, Executor of the Estate of Alfred W. Ball, deceased in the full and just sum of Twelve thousand (\$12000) dollars, to be paid to the said Lewis A. Griffith, Executor of the Estate of Alfred W. Ball, deceased, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors and assigns jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of April, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Lewis A. Griffith, Executor of the Estate of Alfred W. Ball, deceased, as appellant, and William W. Stewart, as appellee, being No. 1774 upon the docket of said Court a decree was rendered against the said William W. Stewart aforesaid and the said William W. Stewart having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Lewis A. Griffith, Executor of the Estate of Alfred W. Ball, deceased citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said William W. Stewart shall prosecute said appeal to effect, and answer the decree, debt, interest and all damages and costs if he fail to

make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM W. STEWART. [SEAL.]  
 UNITED SURETY COMPANY, [SEAL.]  
 By OSCAR J. RICKETTS, *Agent*. [SEAL.]  
 EDWARD B. EYNON, JR., [SEAL.]  
*Att'y in Fact.*

[Seal of United Surety Company.]

Sealed and delivered in presence of—  
 LOUIS A. YOST.

Approved by—  
 SETH SHEPARD,  
*Chief Justice, Court of Appeals  
 of the District of Columbia.*

Surety satisfactory.  
 CHAS. H. MERILLAT,  
*Att'y for L. A. Griffith, Executor.*

[Endorsed:] No. 1774. Lewis A. Griffith, Executor, Appellant vs. William W. Stewart. Supersedes Bond on Appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed April 10, 1908. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, ss:

To Lewis A. Griffith, Executor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein William W. Stewart, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 10th day of April, in the year of our Lord one thousand nine hundred and eight.

SETH SHEPARD,  
*Chief Justice of the Court of Appeals  
 of the District of Columbia.*

Service accepted this 11th day of April 1908.

CHAS. H. MERILLAT,  
*Att'y for Lewis A. Griffith, Executor.*

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 11, 1908. Henry W. Hodges, Clerk.



## Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 407, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Lewis A. Griffith, Executor, Appellant, vs. William W. Stewart No. 1774, April Term, 1908, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 13th day of April A. D. 1908.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,  
*Clerk of the Court of Appeals  
of the District of Columbia.*

Endorsed on cover: File No. 21,145. District of Columbia Court of Appeals. Term No. 145. William W. Stewart, appellant, vs. Lewis A. Griffith, executor of Alfred W. Ball, deceased. Filed April 28th, 1908. File No. 21,145.



Office Supreme Court U. S.  
FILED

APR 12 1910

JAMES H. MCKENNEY,  
Clerk.

IN THE  
**Supreme Court of the United States.**

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No. 145.

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**WILLIAM W. STEWART, APPELLANT**

vs.

**LEWIS A. GRIFFITH, EXECUTOR, APPELLEE.**

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**LIST OF SUPPLEMENTAL AUTHORITIES.**

To the point that after a binding contract for the sale of lands, there is a conversion and that the real estate sold thereafter is personalty and the purchase price in equity real estate.

Johns Hopkins Univ. *vs.* Williams, 52 Md., 229-39.

That even a devise with imperative directions to sell but with the details as to the sale left to discretion, works in equity a conversion ; and that the heirs acquire merely a chose in action, the executor representing everyone interested.

Lambert *vs.* Morgan, 110 Md., 1-29.

That probate of a will disposing of both real and personal property is as to the personalty (which the land in controversy was under the doctrine of equitable conversion by reason of the decedent's sale thereof) final

and conclusive and that the law gives effect to the probate without reference to the *manner* of admitting the will to record.

Warford *vs.* Colvin, 14 Md., 532.

That the probate of a will and grant of letters testamentary cannot be questioned in collateral proceedings and the action of the Probate Court cannot be impeached incidentally.

Shultz *vs.* Houch, 29 Md., 24.

Oberlander *vs.* Emmel, 104 Md., 259.

That where the factum of the will is admitted by the pleadings and assumed by the issues evidence is unnecessary to establish the fact.

Townshend *vs.* Townshend, 7 Gill., 10.

That the raising of so-called doubts cannot in Maryland defeat specific performance, especially where the heirs are not assailing.

Levy *vs.* Iroquois Co., 80 Md., 300.

CHAS. H. MERILLAT,

GEO. R. GAITHER,

*Attorneys for Appellee.*



IN THE  
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 145.

WILLIAM W. STEWART, APPELLANT,

*vs.*

LEWIS A. GRIFFITH, EXECUTOR, APPELLEE.

**BRIEF ON BEHALF OF APPELLANT.**

**Statement of Case.**

This is an appeal from a decree of the Court of Appeals of the District of Columbia, reversing the decree of the lower court dismissing a bill for the specific performance of a contract for the sale of land in Maryland, and directing that a decree be entered, granting the prayers of the bill.

The bill, in substance, alleges as follows:

Plaintiff (appellee) brings suit as executor of the estate of Alfred W. Ball, deceased. On June 4, 1903, Ball, being seized in fee of the real estate described in the bill, and situate in Prince George's County, Maryland, entered into an agreement with appellee, appointing him agent and attorney to negotiate and sell the property. On June 5, 1903, appellee, under his power of attorney, and with the consent and approval of Ball, proceeded to effect a sale of the property, and



by a written contract between appellee and appellant sold the property to appellant for \$40 per acre (the tract containing 240 acres, more or less), appellant agreeing to pay, and paying on said day, \$500 as part of the purchase price, and agreeing to pay in cash the balance of one-half of the purchase price on or before November 7, 1903, and to give five equal promissory notes payable in one, two, three, four, and five years after said November 7, and representing the remaining half of the purchase price, to be secured by mortgage, and the deed from Ball to appellant to be executed and delivered when final payments should be made. The contract further provided that the land should be surveyed and the purchase price fixed at \$40 an acre on the number of acres shown by the survey, the cost of survey to be borne equally by appellant and appellee; that the proper deed and abstract of title showing a clear and unencumbered fee-simple title should be made by one Roberts, an attorney of Maryland, who should act as attorney for both parties, and be paid a fee of \$50, to be borne equally by both parties; that appellee, as agent for Ball, should have the privilege of forfeiting the \$500 paid by appellant in case the balance of the first half of the purchase price should not be paid by the 7th day of November, 1903, and that Ball should be entitled to the possessory right to the land until appellant paid the balance of the first half of the purchase price. Ball assented to the contract and, subsequent to its execution, ratified and confirmed the same, and stood ready at all times prior to his death to convey a good, fee-simple title, free and clear of all liens and encumbrances to appellant, but appellant, while holding the contract of sale to be good and in force and paying one half the taxes on said land, at no time prior to Ball's death tendered himself ready and willing to perform the contract. The land was surveyed and found to contain 288.23 acres, and appellee paid the costs of survey. On November 6, 1903, Ball died, leaving a last will and testament, whereby he appointed appellee executor, with full and complete power and authority over decedent's real, personal, and

mixed estate. Appellee, under authority granted him December 15, 1903, by the orphans' court of Prince George's County, Maryland, in conformity with the laws of that State, tendered himself ready and willing to perform the things required of said Ball to be done under the contract of sale; furnished appellant an abstract of title as provided for and a certificate from Roberts that a deed from appellee would pass a good title; tendered appellant a deed of conveyance and a deed of mortgage to be executed by appellant securing balance of the purchase money; offered to let appellant into possession of the land, and demanded of him that he perform the things required to be performed by him under said contract of sale. Appellant refused to do any of the said required things, or to accept the tender of the deed in fee, to pay \$5,273.00, representing the remainder of the first half of the total purchase price of the land; denied that appellee could convey a good, fee-simple title, clear and unencumbered, but expressed a willingness to perform his part of the contract if a good title could be conveyed to him; said that he did not consider the contract ended or the \$500 forfeited, to which statement appellee agreed, and further said that he wished and was ready to carry out his contract provided a good title could be given him, and that he, appellant, was acting for an oil company in the matter, and appellee said he knew nothing of any oil company, and dealt with appellant and would look to him to keep his contract. Roberts made a further examination of title, and reported the same good, and that a deed from appellee would pass a good title to appellant. Appellee again tendered appellant a deed of conveyance and the latter refused to accept the same, and still refuses to carry out his contract. In February, 1904, appellee's attorney saw appellant's attorney, and informed the latter that the appellee could give a good title, and appellant's attorney replied that he did not believe that appellee could give a title, and that his client was willing to take the land whenever appellee could give a good title. Appellee is

ready and willing to perform all things required of him, and appellant refuses to carry out the contract. The prayer is for specific performance of the alleged contract. The bill has attached to it exhibits of the power of attorney, contract of sale, copy of the will of Ball, order of orphans' court, abstract of title and certificate, the deed tendered appellant, and mortgage to be executed by appellant.

The answer of appellant is, in substance, as follows:

Avers that appellee has no right to bring or maintain the bill as executor of Ball's estate; denies appellee's right as executor or otherwise to bring the suit or obtain a decree in his own right respecting the matters contained in the bill; avers that he, appellant, executed the option contract solely in behalf of the Maryland Oil and Development Company, of which he was president, and that Ball and appellee so knew at the time of the execution of the contract; that the money paid appellee was the money of said corporation; that appellant, to the knowledge of appellee and Ball, made said option contract in his, appellant's, name merely for convenience, and that said corporation is a necessary party; that said contract became null and void on November 7, 1903, both by the death of Ball and the terms of the contract; that the appellee regarded said contract as void, as on November 10, 1903, he declared the matter as ended, and before any attempted revival thereof the appellant acquiesced in said termination of the contract, and notified appellee that he, appellant, assumed no personal liability regarding the contract; he does not admit Ball's assent to or ratification of said alleged contract, and denies that he paid one-half the taxes on said land pursuant to any personal obligation; no survey was made until after Ball's death and after the contract had expired; admits the death of Ball, and alleges that the death of Ball terminated all interest and authority of appellee as his attorney, and the contract for the sale of the land became void and the same was not revived or made valid by any pretended verbal agreements set forth in the bill, and as to

all of which matters he pleads the statute of frauds as defense; does not know whether Ball made any will; does not admit the same and demands strict proof thereof; that if there be such a will as set forth in the bill, it, by its own terms, repudiated said contract of sale, and authorized the executor to sell decedent's real estate only at public sale after one month's notice by due publication; respecting the pretended proceedings in the orphans' court of Prince George's County, the appellant has no knowledge of the same, nor was he a party thereto nor did he consent to the same, and does not admit them nor their validity; that said court was without jurisdiction to ratify said alleged contract or to authorize complainant to execute the same, and was wholly without jurisdiction in the premises; denies that appellee ever tendered himself ready to perform said contract within the time fixed by the terms thereof; denies that he ever employed Roberts as his attorney or agreed to abide by his opinion respecting the title; denies that Roberts ever submitted to appellant an abstract, and alleges that he submitted the same to the attorney for the oil company, which did not show a good title; that appellee did not tender any deed sufficient to convey a fee-simple, unencumbered title; appellant after the death of Ball did not express a willingness to take the land; admits he declined to make the purchase and to pay appellee \$5,273.00 in addition to the \$500.00 paid, or to give his five notes for the remaining half; alleges that the appellee had no title which he could convey and the contract had been abandoned by mutual consent; the real buyer was the oil company; does not admit any willingness to perform the contract of sale, or that he ever expressed the opinion that the contract was in force or that the \$500.00 had or had not been forfeited and demands strict proof; he never received any consideration for the making of any new contract, nor was the same ever expressed in writing, nor were the terms of the original optional agreement entered into by appellant as agent for said corporation ever waived,

modified or revived; appellant was acting for said company; he pleads the statute of frauds as to all the alleged considerations; all matters not specially answered are denied; admits that Thomas stated to appellee's attorney that appellee could not give a good title as executor or otherwise; denies that the pretended conversations created any contract; denies that Thomas was his attorney; pleads the statute of frauds to the whole bill; alleges that appellee, about two months before filing the bill herein, entered suit against appellant in Prince George's County, and that appellee has a plain, adequate and complete remedy at law, and should be required to elect whether he will proceed with the action at law or with this suit.

The evidence in the case is voluminous, much of it immaterial, incompetent and, of the oral testimony, conflicting. The documentary evidence is the power of attorney from Ball to the appellee, dated June 4, 1903, and is, in substance, as follows:

"I, A. W. Ball, \* \* \* do hereby constitute and appoint Dr. L. A. Griffith \* \* \* to be my agent and attorney, for me and in my name to negotiate for the sale and transfer of my real estate in Prince George's County \* \* \* said real estate containing 240 acres of land, for any sum he may be able to obtain, \* \* \* not less however than the sum of \$35 per acre, \* \* \* all over and above \$35 per acre the fee and commission to be paid to the said L. A. Griffith, for the services rendered me in obtaining a sale for the said property to be paid him out of the first payment to be paid for the property by the purchaser. I also agree to sign the contract in writing ratifying and approving of the sale to be made of the real estate, provided four hundred dollars be paid to me, it being also understood and agreed that the sale shall be consummated within 150 days from the date of signing contract of sale, by payment by the purchaser of the sum of one-half of the whole purchase money (and that one acre known as the

burying ground on said property is to be reserved forever to me and my heirs,) and that I am to have the use of the houses on said property and necessary wood until January 1, 1904" (Rec., 9).

The agreement of sale, signed by the appellant and the appellee as attorney for Ball and dated June 5, 1903, is, in substance, as follows:

"That the said W. W. Stewart has paid to the said L. A. Griffith, agent, the sum of five hundred dollars (\$500) part purchase price of the total sum to be paid for a certain tract of land owned by the said Alfred W. Ball, \* \* \* Prince George's County Md. \* \* \* (240 acres more or less), the same being sold at the rate of \$40 per acre, which said sum of five hundred dollars is hereby acknowledged to have been paid to and received by the said L. A. Griffith, agent, and the said L. A. Griffith as the agent and duly authorized attorney of the said Alfred W. Ball, hereby grants, bargains and sells and agrees to convey by proper deed or deeds of conveyance in fee simple free and clear of all liens and encumbrances of every kind and nature duly executed by the said Ball to the said Stewart, the said two hundred and forty acres of land upon further payments and conditions hereinafter named to wit: \* \* \* The balance of one-half of the purchase price of the said 240 acres more or less at the rate of forty dollars per acre is to be paid to the party of the first part on the 7th day of November 1903, and the remaining one-half of the total purchase price is to be divided into five equal payments. \* \* \* And said party of the first part reserves therefrom a certain burial lot of one acre. \* \* \*

"The said land is to be surveyed and a plat made thereof and the total purchase price is to be at the rate of forty dollars per acre as determined by the said survey, the costs of said survey to be borne equally by the said parties of the first part and the second parts. Proper deed or deeds of conveyance and abstracts of title of the said land based upon title search therefor to be made by J. K. Roberts, attorney, \* \* \* showing clear and unencumbered



fee simple title, \* \* \* and one-half of the total costs for same not exceeding \$50 is to be borne equally by the parties hereto. *In case the remainder of the first half of the purchase price be not paid on November 7, 1903, then the said \$500 so paid to the said Griffith is to be forfeited and the contract of sale and conveyance to be null and void and of no effect in law, otherwise to be and remain in full force.* \* \* \* The said Ball is to have the right to continue to dwell and live in the house now occupied by him on the said land and to cut and use the necessary fire wood therefrom up to and until April 1, 1904, and the taxes for the year 1903 are to be paid one-half by the said Ball and one-half by the said Stewart. The possessory right to all of said premises on the property mentioned herein is to remain in the said Ball until the one-half payment of the total purchase price herein provided for on November 7, 1903, has been fully paid and satisfied, to the said L. A. Griffith, agent" (Rec., 321).

The following is a copy of the ratification of the above contract of sale by Ball (Rec., 80) :

"JUNE 19, 1903.

"I, Alfred W. Ball, having received from my duly authorized agent and attorney, Dr. L. A. Griffith, the sum of four hundred dollars, do hereby ratify and confirm the sale made by him to W. W. Stewart of my real estate near Meadows, Pr. Geo. County, Md. This is with the understanding that if said sale is consummated and one-half the purchase money be paid cash that Dr. L. A. Griffith, my agent and attorney, shall pay out of his commissions one-half of the cost of surveying and attorney's fee—the other half by W. W. Stewart, otherwise I am to pay the costs of surveying and attorney's fees.

"ALFRED W. BALL."

Ball died on the night of November 5 or the morning of November 6, 1903, and the contract of sale was to be complied with by a cash payment on November 7 or there was

to be a forfeiture of the \$500 and the termination of the contract. The appellant did not make the cash payment of the first half of the purchase price before Ball's death, or at any time afterwards.

On November 7, 1903, the appellee wrote the appellant as follows:

"UPPER MARLBORO, MD., Nov. 7, 1903.

"W. W. STEWART, Esq., *Washington, D. C.*

"MY DEAR SIR: I intended to be there today, but am unable to come. I met with an accident and so hurt my foot that I can wear no shoe. I may be able to get there on Monday but will let you know. If you prefer you can drive over today, or if not, I will telegraph to you Monday early, and if I cannot get there, you can take the 9.30 train here or drive here. I am sorry not to be able to get there, for I am anxious to close up the matter at the earliest date. If I cannot get there I may send Mr. Roberts, if you cannot come.

"Yours very truly,

"L. A. GRIFFITH" (Rec., 158).

The next written communication between the parties is as follows:

"UPPER MARLBORO, MD., Nov. 10, 1903.

"W. W. STEWART, Esq., *Washington, D. C.*

"DEAR SIR: I have consulted two lawyers and am satisfied that I am fully authorized and empowered to complete sale of land and give deed. It rests with you. Please let me know positively on or before Monday next (16th) what you intend to do. There is a proposition on hand from other sources and I have under this will power to act. I will make private arrangements at once for a disposition of it, if you do not take it. If you do not meet the requirements and satisfactory arrangements are not made before Monday, 16th, at 12 o'clock please consider the matter ended. I think you are entitled to the property and I desire that you shall get it, but I

must do for the best interest of the estate, and I will gladly wait for you until Monday, 16th.

"Y's very truly, L. A. GRIFFITH.

"I have arranged to have the property surveyed at early date. This necessary in either case.

"G." (Rec., 162).

The appellant did not reply to this letter or take any steps to take advantage of its offer or to prevent the appellee's terminating the contract (Rec., 163).

On June 15, 1903, A. W. Thomas, attorney for the Maryland Oil Company, received from J. K. Roberts, appellee's attorney, and the person named in the contract of sale to make the abstract of title, the following bill:

"UPPER MARLBORO, MD., *June 13, 1903.*

"The Maryland Oil and Development Company, a Corporation, to Joseph K. Roberts, Attorney, D. C.

"To one half of the fees as agreed upon between the corporation and Dr. L. A. Griffith, agent of Mr. Alfred W. Ball, for professional services in the matter of the title and conveyance of the 240 acres more or less of a tract of land called 'The Child's Portion' and 'Crotch Hall,' near Meadows (Centerville), Prince George's County, Maryland, the other ( $\frac{1}{2}$ ) one-half to be paid by Dr. Griffith, agent of Mr. Alfred W. Ball, \$25,00" (Rec., 116).

The testimony in the record is undisputed that the appellant at the time of the making of the contract of sale was the president of the oil company, and that he was purchasing the land in question for said company (Rec., 87, 104, 105, 107, 108, 109, 113, 114, 118, 126, 127, 150, 153, 176, 181, 206, 207, 208, 220, 223, 251).

Whether the appellee and Ball knew that the appellant was buying the land for the oil company and not for himself is a disputed question. Testimony in the affirmative (Rec., 85, 87, 88, 89, 91, 99, 101, 113, 115, 121, 146, 151, 152,

154, 155, 164, 177, 178, 179, 188, 198, 212, 213, 218, 249); testimony in the negative (Rec., 50, 53, 54, 58, 62, 229, 235, 236, 241).

After the death of Ball, and after the appellee's letter to appellant notifying him that he should consider the matter ended unless complied with by a certain day, when the appellee sought to renew negotiations for the conveyance of the property upon the terms contained in the contract of sale of June 5, 1903, the testimony is uncontradicted that the appellee was informed and knew that the appellant had been acting for the oil company in making the contract of sale (Rec., 53, 56, 118, 119, 122, 143, 144, 161, 162, 164, 166, 200).

After the 7th of November, 1903, and before the 15th, appellee testifies that he saw appellant, and the latter informed him that the property had been bought for the oil company (56), and appellee said that he would have nothing to do with the company but would deal with appellant. Appellant testifies that this interview was on November 9, 1903, and that he told appellee that he, appellant, had nothing to do with the matter, that the oil company was the party interested; that he would present the matter to the company and it could take any action it chose (161). And thereafter appellee wrote the above letter of November 10, declaring that unless the terms of the sale were complied with by the 16th of November, the appellant should consider the matter ended.

Subsequently, and after appellee, as he alleges, had caused the alleged will of Ball to be admitted to probate and an order passed by the orphans' court authorizing him to carry out the contract, he notified the appellant what he had done in the premises, and attempted to revive negotiations for carrying out the contract of sale. Appellant wrote appellee that the contract was entered into for and on behalf of the oil company, that he had no personal interest in the matter, and did not assume any personal liability regarding it. Ap-

pellee replied that he knew nothing about any company and would deal with appellant (164). Subsequently there were numerous interviews with reference to the matter, but appellant invariably claimed that he had nothing to do with the matter personally, that the oil company was the party to negotiate with. The testimony is contradictory as to what took place at these verbal interviews between appellant, the attorney for the company, and appellee and his attorneys. There is no writing of any kind in evidence showing that, after the forfeiture of the contract, appellant waived the forfeiture or renewed the contract or promised to take the property upon the terms of the contract, or otherwise.

The attorney for the oil company wrote the appellee's attorney, in substance, that he had examined the records of the proceedings in the orphans' court, and that it does not appear to him that the court had jurisdiction to make the order authorizing appellee to convey—that other steps would have to be taken to furnish the perfect and unquestioned title desired by the purchaser. That the agreement should stand pending the completion of title. That he had so advised the company, the real party to the agreement, Stewart being the nominal party only (Rec., 117). Thereafter an unexecuted deed, abstract of title, and mortgage to be executed by Stewart were presented to appellant and a demand made that he comply with the terms of the contract, which he declined to do, claiming that he was not personally interested in the matter; that appellee could not give a good title, that the heirs of Ball were necessary parties, and that the contract had been ended. There is conflicting testimony as to whether appellant promised to take the land upon a good title being conveyed to him; all this testimony is oral.

The appellee, under objection, offered in evidence a certified copy of the will of Alfred Ball (47). Copy of the will (13). Also offered in evidence, under objections, a certified copy of the order of the orphans' court authorizing the ap-

pellee, as executor, to carry out the contract (48). This order is as follows:

"In the Orphans' Court of Prince George's County,  
Maryland.

"*In re* The Estate of ALFRED WILMER BALL, Deceased.

*"Order of Court.*

"Upon petition of Lewis A. Griffith, executor of Alfred Wilmer Ball, filed in this court, the said Lewis A. Griffith, appearing as by the records of this court, doth show, to have duly probated the last will and testament of the said deceased and to have been named in the said last will, etc., as the executor of the last will and to have duly qualified as such executor, and further reciting the contract of sale made by the said Lewis A. Griffith, as attorney for the said Alfred Wilmer Ball under power of attorney, filed with the said petition, with a certain William W. Stewart, which said contract is filed also with the said petition, and that said contract by reason of the death of the said Alfred Wilmer Ball on the 6th day of November, 1903, the day before the contract was to be carried out, could not be carried out by the said Alfred Wilmer Ball, in his lifetime, and setting forth the fact that this court had power and authority in the premises to authorize him as such executor to carry out and fulfill the said contract with the said W. W. Stewart, and this court being of the opinion that it has such authority to so authorize him to carry out the said contract with the said W. W. Stewart:

"It is, thereupon, this 15th day of December, 1903, by the orphans' court of Prince George's County, upon consideration of said petition, adjudged and ordered, that the said Lewis A. Griffith, as executor of the said Alfred Wilmer Ball, be and he is hereby authorized further to execute a deed to the said Stewart conveying to him, the said Stewart, a good fee-simple title unencumbered of the said property



(real estate) of said Ball mentioned in same, upon the payment by the said Stewart of one-half of the entire purchase money less the \$500.00 deposited, already paid, and the execution by the said Stewart of his five promissory notes, each for the one-fifth part of one-half of the entire purchase money of said land, payable to the order of the said Lewis A. Griffith, as executor, in one, two, three, four, and five years from date, with interest payable semi-annually, the same to be secured by a purchase money mortgage on said property as mentioned in the said agreement of sale" (Rec., 15).

Among the recitations contained in the unexecuted deed of conveyance tendered by appellee, as executor, to the appellant, is the following:

"And whereas the said court (orphans' court) did on the 17th day of November 1903, by its order passed on said date, authorize, direct and empower the said Lewis A. Griffith as executor to convey the said property to the said William W. Stewart, party of the second part, upon the payment of the residue of the unpaid installment of purchase money as agreed upon in the said agreement under seal, and the securing the payment of the deferred portion or instalments of the said purchase money, to wit, the one-half of the said total purchase money for the said land at forty dollars (\$40) per acre, by the execution of the five promissory notes of the said William W. Stewart drawn to the order of the said Lewis A. Griffith, executor of the said Alfred Wilmer Ball, and payable in one, two, three, four, and five years from date with interest payable annually.

"And whereas the said Lewis A. Griffith as executor of the said Alfred Wilmer Ball deceased, for the purpose of complying with and carrying out the said order of the said orphans' court in the premises is willing to execute this indenture.

"Now this indenture witnesseth, that the said Lewis A. Griffith as executor of the last will and testament of the said Alfred Wilmer Ball, as aforesaid, for and in consideration of the premises as aforesaid, and the

further consideration of the payment to him of the purchase money for the said land as agreed upon \* \* \* and the execution by the said W. W. Stewart of the said mortgage on the said hereinafter mentioned land, securing the said five notes for the deferred payments of purchase money for said land, the said Lewis A. Griffith as executor of the last will and testament of Alfred Wilmer Ball, doth grant, release, confirm and convey unto the said William W. Stewart, his heirs and assigns forever in fee simple, all the following described real estate and premises" (Rec., 26-7).

In the abstract of title offered in evidence by the appellee it is set forth that the petition of the appellee asked the orphans' court to pass the above order of November 17, 1903, under the provisions of the Code of Maryland in such cases made and provided (Rec., 23).

The appellee did not offer in evidence or attempt to prove in the suit at bar, the record of the proceedings of the orphans' court of Prince George's County, in and by which the appellee claims he was appointed executor, and the will of Ball admitted to probate and record. Neither did he offer in evidence or attempt to prove the record of the proceedings in which the above order of November 17, 1903, was passed. The only part of the record of said proceedings in evidence herein is a certified copy of the order admitting the will to probate and a certified copy of the order authorizing the appellee to convey the property in accordance with the terms of the contract. The appellee did not offer in evidence any original or certified copy of any letters testamentary issued to him by the orphans' court of Prince George's County. There is conflicting testimony as to the meaning of the forfeiture clause of the said contract as understood by the appellant, appellee and the deceased Ball, to which attention will be called in the argument.

Upon consideration of the cause the equity court, on February 21, 1909, decreed specific performance of the contract (Rec., 329). Thereafter the appellant filed a motion to vacate the decree and for a rehearing, which was granted and the decree vacated (Rec., 367); and thereafter additional testimony was taken. Upon final hearing a final decree was passed dismissing the bill of complaint, for the reasons, in the opinion of the judge, that the heirs and devisees of the deceased Ball were indispensable parties to the cause, and that the deed tendered by the appellee was insufficient to pass title (Rec., 368). Upon appeal the Court of Appeals reversed the last-mentioned decree and directed that the prayers of the bill be granted. From this decree the appellant appeals to this court for its adjudication.

### **ASSIGNMENTS OF ERROR.**

The Court of Appeals erred in reversing the decree of the equity court and directing specific performance, because:

1. *There is no proof in the record that the appellee is the duly qualified executor of the estate of Alfred W. Ball, deceased, and, as such, is entitled to bring this suit.*
2. *The record does not show that the orphans' court of Prince George's County, Maryland, had jurisdiction to admit the alleged will to probate or to grant letters testamentary to the appellee appointing him executor thereof.*
3. *The record shows that said orphans' court had no jurisdiction to pass the order of December 15, 1903, and that the same is a nullity.*
4. *The record does not show any existing contract which can be enforced by specific performance against the appellant, or any contract binding the appellant existing at the date either of the filing of the bill herein or of the said sup-*

*posed orders of the said orphans' court of November 17 and December 15, 1903, or either.*

*5. The record shows that the heirs of Alfred W. Ball are indispensable parties to this suit.*

*6. The record shows that the deed alleged to have been tendered the appellant by the appellee does not convey a good fee-simple title to the land involved free from all liens and encumbrances.*

*7. The case made by the record is not of that completeness as to justify the court in decreeing specific performance of the alleged contract.*

### **ARGUMENT.**

#### **I and II.**

Assignments of error 1 and 2 will be considered together. The proof in the cause does not show that the appellee is the duly qualified executor of Ball, deceased, and entitled to sue in this District, and the record does not show that the orphans' court of Prince George's County had jurisdiction to admit the will to probate or to grant letters testamentary to the appellee.

The principle of law that an executor appointed in one State cannot sue or be sued as such in another State, unless the laws of the latter State authorize such suit, is so well established that no citation of authorities is needed.

After the passage of the Revised Statutes relating to the District of Columbia in 1875 and up to the enactment of the District Code in 1902 no foreign executor could sue or be sued in the courts of said District (*Halstead vs. Wyman*, 2 Mackey, 368; *Plumb vs. Bateman*, 2 App. D. C., 169; *Noonan vs. Bradley*, 9 Wall., 394; *Fenwick vs. Sears*, 1 Cranch, 259).

Section 329 of the District of Columbia Code provides:

"It shall be lawful for any person \* \* \* to whom letters testamentary \* \* \* have been granted by the proper authority in any of the United States \* \* \* to maintain any suit or action, and to prosecute and recover any claim in the District in the same manner as if the letters testamentary \* \* \* had been granted to such person \* \* \* by the proper authority in the said District; and the letters testamentary \* \* \* or a copy thereof certified under the seal of the authority granting the same shall be sufficient evidence to prove the granting thereof, and that the person \* \* \* hath \* \* \* administration."

Then, in order for the appellee to maintain this suit, he must allege and prove that letters testamentary in the estate of Ball have been granted him by the proper authority of Prince George's County, Maryland. Nowhere in his bill does he make such allegation. The only allegations he makes are that he "brings this suit as the executor of the estate of Alfred Ball" (Rec., 1), and that "Ball died, leaving a last will and testament, whereby he appointed complainant his executor," etc. (Rec., 5). He makes no allegation that the proper authorities of Prince George's County had granted him letters testamentary. The introductory part of Complainant's Exhibit A<sup>3</sup>, appearing to be a grant of letters testamentary, was not offered in evidence. The bill (Rec., 5, fol. 7) describes this exhibit as "a true copy of which last will *and the probate whereof*." The answer denies the above-quoted allegations and demands strict proof thereof, as well as of the will (Rec., 39, 41). Nowhere in the evidence does the appellee offer in evidence letters testamentary or a certified copy thereof. The only offer he makes respecting the matter is, "I desire now to offer in evidence a certified copy of the will of Alfred W. Ball, deceased" (Rec., 47).

Now, what evidence was required of the appellee to prove

that the orphans' court of Prince George's County admitted the will to probate and granted him letters testamentary?

This inquiry involves a consideration of—

1. The nature and jurisdiction of the said orphans' court and the probative effect of its decrees when asserted as the foundation for relief in the courts of this District.

"The orphans' court shall not under pretext of incidental power or constructive authority exercise any jurisdiction not expressly given by this act or some other law."

Art. 93, sec. 256, p. 1398, Md. Code.

"The orphans' court has no constructive powers. It has few of the attributes appertaining to courts of general jurisdiction. Its jurisdiction is limited and created by statute, and its exercise of power can receive no support from presumptions."

*Levering vs. Levering*, 64 Md., 399.

It is a court of limited and special jurisdiction and is inhibited from the exercise of any power not given by statutory enactment.

*Townsend vs. Brooke*, 9 Gill, 91.

*Broders vs. Thompson*, 2 H. & G., 126.

*Scott vs. Burch*, 6 H. & G., 67.

*Bowie vs. Shirelin*, 30 Md., 553.

*Taylor vs. Bruscup*, 37 Md., 226.

*Grant Coal Co. vs. Clary*, 59 Md., 444.

*State vs. Warren*, 28 Md., 338.

*Shafer vs. Shafer*, 85 Md., 558.

*Overby vs. Gordon*, 13 App. D. C., 427.

*Tuohy vs. Hanlon*, 18 App. D. C., 230.

*Yeaton vs. Lynn*, 5 Pet., 224.

*Kennedy vs. Sinnott*, 179 U. S., 600.

Its mere exercise of jurisdiction does not raise a presumption of the existence of the requisite jurisdictional facts, for nothing is presumed to be within its jurisdiction.

*Clark vs. Bryan*, 16 Md., 171.



A party who relies upon its decisions or who claims any right or benefit under its proceedings must affirmatively show its jurisdiction in the premises by alleging and proving the same.

*Boarman vs. Patterson*, 1 Gill, 372.

*Wickes vs. Caulk*, 5 Harr. & J., 86.

A decree without or transcending its jurisdiction is void and may be attacked in a collateral proceeding.

*Wilson vs. Ames, MacA. & M.*, 278.

*In re Estate of McIntire*, 5 Mackey, 293.

*Cook vs. Speare*, 13 App. D. C., 446.

*Sinnott vs. Kennedy*, 14 App. D. C., 1.

*Fredwalt vs. Shepley*, 74 Md., 230.

And generally with reference to courts of limited and special jurisdiction:

There is no presumption of law in favor of their jurisdiction; the facts which give jurisdiction must appear on the face of their proceedings; otherwise such proceedings are void; the person claiming the benefit of such proceedings must affirmatively show the jurisdiction; if the jurisdiction does not appear on the face of the proceedings the presumption of the law is that the court had no jurisdiction.

*Kempe vs. Kennedy*, 5 Cranch, 173.

*Griffith vs. Frazier*, 8 Cranch, 10.

*Thatcher vs. Powell*, 6 Wheat., 119.

*McCormick vs. Sullivant*, 10 Wheat., 192.

*Ex parte Watkins*, 3 Pet., 193.

*Grignon vs. Astor*, 2 How., 319.

*Boswell's Lessee vs. Otis*, 9 How., 348.

*Harvey vs. Tyler*, 2 Wall., 328.

*Galpin vs. Page*, 18 Wall., 350.

*Hershberger vs. Blewitt*, 55 Fed., 170.

*Wickes vs. Caulk*, 5 Harr. & J., 36.

2. The facts necessary to be presented to the orphans' court that it may have jurisdiction to admit a will to probate or to grant letters testamentary.

Sections 327, 328, and 329 of article 93, page 1420, the Maryland Code of 1888, declare what facts will give the orphans' court jurisdiction to admit a will to probate and record. They are, in substance, as follows:

If any will be exhibited for probate to the orphans' court and any of the next relations of the deceased shall attend and make no objections or enter no caveat, or if it shall appear that reasonable notice of the time of exhibiting the same hath been given to such of the next relations as might conveniently be therewith served and no person shall object or enter a caveat, the court shall forthwith proceed to take probate; or where such notice shall not appear to have been given the court may either direct summons to the said near relations, or some one or more, to appear on some fixed day to show cause wherefore the will should not be proved, or direct such notice to be given in the public papers or otherwise, as they may think proper, and if no objection shall be made or caveat entered on or before the day fixed, the court may take probate of such will.

Sections 41 and 50 of said article 93, pages 1327 and 1332, declare what facts shall give the court jurisdiction to grant letters testamentary. They are, in substance, as follows:

When any will shall have been proved as herein directed before the orphans' court, letters testamentary may forthwith be committed to the executor named in the will, provided he shall execute a bond to the State of Maryland, with two good sureties approved by the court, and in such penalty as the court may require; and after filing his bonds and before letters shall be committed to him, he shall take the oath that he will well and truly administer the estate.

The appellee has not introduced in evidence any record of the proceedings showing the existence of any of the above facts necessary to give the court jurisdiction; but, on the

contrary, the evidence in the case showing the circumstances attending the alleged probating of the will and granting of letters testamentary create the reasonable inference that some of the necessary facts had no existence.

The appellee testified:

"After the death of Ball, I presented the will of Alfred Ball; had it probated by the orphans' court and got from them power to transfer this property to Dr. W. W. Stewart after having submitted to the orphans' court the contract of sale."

Also:

"The regular sessions of the orphans' court are held on the first and third Tuesdays of each month" (Rec., 56).

Mr. Roberts, attorney for the appellee, testified:

"I am familiar with the practice in Prince George's County and I think a couple of months would be a reasonable time within which to procure authority from the court for an executor to carry out a contract for the sale of real estate made by a decedent. I had a number of these cases and it sometimes took four or six months. The orphans' court met regularly only on the third Tuesday in each month and a special meeting on the first Tuesday" (Rec., 62).

W. R. Smith, the register of wills for Prince George's County, testified:

"There was no petition for letters filed in the case by Dr. Griffith for his appointment; the court does not always require it" (Rec., 294).

The first Tuesday in November, 1903, occurred on November 3 (before the death of Ball), and the third Tuesday of that month occurred on the 17th, the day that the appellee claims that he presented the will to the court, had the same probated and obtained the order of the court authorizing him to carry out the contract of Ball. Between the date of

the death of Ball and this 17th day of November, 1903, there was no meeting of the court. It is quite evident that no notice was given to any of Ball's heirs of the proposed action of the appellee, as required by the statute. He was in such a hurry that he did not even file the usual petition for the probate of the will. It was as he testified; he merely presented the will and the contract and got the court to pass the several orders, one of which the appellee's attorney says it usually required several months to obtain. This action was wholly *ex parte* and did not give the court jurisdiction of the matter.

In case of Emmert *vs.* Stouffer (64 Md., 543) the testator devised real estate in such a manner that it devolved in a different way from what it would had she died intestate. The executors exhibited the will, alleging it was not the will of the testator, because she was mentally incapable of making it, and the court, after hearing the testimony of the subscribing witnesses and others, so decided and granted letters of administration. The question of the court's jurisdiction in the matter arose collaterally in a suit for specific performance. The court said:

"The court has no jurisdiction in matters of probate except such as is conferred by the 93rd article of the Code."

After quoting the substance of the sections giving the orphans' court jurisdiction the court continues:

"It is thus seen that great pains have been taken to afford to all persons interested, an opportunity to be heard before a determination is made against them. Two parties are contemplated as having a right to be heard; the one, which maintains the validity of the will by exhibiting it for probate; the other which comprehends all persons interested, who may desire to defeat and set it aside."

The court held that the orphans' court's decision was pronounced upon an application entirely *ex parte* and that it had no jurisdiction.

We submit that the appellee has no right to bring or maintain this suit, and that the alleged action of the orphans' court was without jurisdiction and void.

### III.

*The record shows that said orphans' court had no jurisdiction to pass the order of December 15, 1903, and that the same is a nullity.*

This order was originally passed on November 17, 1903, but was amended by inserting the word "unencumbered" and, as amended, passed December 15, 1903 (Rec., 23). This order was offered in evidence, under objections (Rec., 48). There was no certified copy of the proceedings attending the making of said order showing the petition or other facts necessary to give the court jurisdiction to pass the same, and, under the decisions cited in the argument of the first and second assignments of error, it is a nullity. In addition, although the orphans' court may have had jurisdiction of the subject-matter of decedent's alleged contract and power to order the executor to carry out the contract and convey the property, yet if the record does not show facts which bring the contract within the scope of such power the court had no jurisdiction and its order is a nullity.

"When a court exercises an extraordinary power under a special statute prescribing its course, we think that that course ought to be exactly observed, and those facts which give jurisdiction ought to appear in order to show that its proceedings are *coram judice*. Without the act of assembly the order for sale would have been totally void."

Thatcher *vs.* Powell, Lessee, 6 Wheat., 119.

Thompson *vs.* Whitman, 18 Wall., 457.

United States *vs.* Walker, 109 U. S., 258.

Windsor *vs.* McVeigh, 93 U. S., 274.

The only law of Maryland authorizing executors to carry out contracts of their testates and convey real estate in accordance therewith is contained in section 81, article 93, page 1342, of the Maryland Code. It is as follows:

"The executor \* \* \* of a person who shall have made sale of real estate, and have died before receiving the purchase money, or conveying the same, may convey said real estate to the purchaser, and his deed shall be good and valid in law, and shall convey all the right, title claim and interest of such deceased person in such real estate as effectually as the deed of the party so dying would have conveyed the same; provided, the executor \* \* \* of the person so dying shall satisfy the orphans' court granting him administration that the purchaser has paid the full amount of the purchase money."

Now, before the orphans' court could obtain and exercise the power and jurisdiction to pass the said order of December 15, facts must have been presented to it showing: that Ball had died; that he had made a sale of the real estate involved; that he did not receive the purchase money or convey the property before his death; and that since his death the purchaser has paid the purchase money. The omission to show to the court any one of these prerequisites is fatal to its jurisdiction. In this case no one of these necessary facts is proved to have been shown to the orphans' court. The only evidence offered is the order itself, but, as we have shown, such order does not prove itself or the recitals therein. Without proof of the jurisdictional facts it is a mere nullity.

But suppose that the certified copy of the order is competent proof of its recitals, then, on its face, it shows the existence of such facts as determine conclusively that the orphans' court had not the power or jurisdiction to pass the order.

The said order after reciting that the appellee filed a petition duly reciting the contract, the death of Ball, his not having carried out the contract before his death, and that



the orphans' court had power to authorize the appellee, as executor, to carry out the contract, provides:

*"That the said Lewis A. Griffith, as executor of the said Alfred Wilmer Ball, be and he is hereby authorized further to execute a deed to the said Stewart conveying to him the said Stewart a good fee-simple title unencumbered of the said property (real estate) of said Ball mentioned in the same, upon the payment by the said Stewart of one-half of the entire purchase money less the \$500 deposit, already paid, and the execution by the said Stewart of his five promissory notes each for one-fifth part of one-half of the entire purchase money of said land, payable to the order of the said Lewis A. Griffith, as executor, in one, two, three, four, and five years from date, with interest payable semi-annually, the same to be secured by the purchase-money mortgage on said property as mentioned in the said agreement of sale."*

The statute says, that the court may make the order when the executor satisfies it that the purchaser has paid the full amount; the order says the court is not so satisfied but is informed that the money has not been paid. This order is clearly a nullity. This section of the Maryland Code only intended that the executor, through the order of the court, should be a mere medium of conveying the legal title, where the purchaser had paid the purchase price and a deed of conveyance was the only thing necessary to complete the performance of the contract. It was made for the benefit of the purchaser. It did not intend that the orphans' court should decide any conflicts or differences between the executor or heirs or devisees and the purchaser; it did not empower the orphans' court to compel specific performance; or determine when or in what manner a purchaser should pay the purchase price, or that he should pay the purchase price. Before the court could take jurisdiction all these matters must have been settled between the executor, or heirs or devisees of the testate and the purchaser. And, in addition

to the other infirmities in the proceeding, the record does not show, and it is not contended, that any heir of Ball was before the orphans' court on the executor's petition, or had any notice or knowledge thereof.

The orphans' courts have power to take probate of wills but not to adjudicate questions of title dependent upon their operation or effect, or to decide upon the rights of disposition. When probate is granted the authority to determine what passes under the will is devolved upon the courts of law and equity. They cannot establish any right that may arise under the will by construction of the will.

Schull *vs.* Murray, 32 Md., 9.

Ramsay *vs.* Welby, 63 Md., 584.

The deed alleged to have been tendered by the appellee to the appellant as a good and sufficient deed to convey a fee-simple title, recites that the authority of the grantor therein is based upon this order of the orphans' court.

In the case of Grant Coal Company *vs.* Clary (59 Md., 445), where a construction of this section of the Maryland Code was involved, the court said:

"Orphans' courts in this state exercise a special and limited jurisdiction expressly conferred by statute, and the Act of 1846, neither in terms nor by implication confers jurisdiction upon such courts, to hear and determine controversies in regard to the sales of real estate by testators or intestates. It merely authorized executors and administrators to convey real estate, sold by testators, provided they satisfy the orphans' court that the purchase money has been paid. Satisfactory proof of such payment, *is a condition precedent to the exercise of the power.*"

And the court held that the order of the orphans' court, where it was not shown that the purchase money had been paid, was no bar to recovery of the land by the heirs of the testator in an action of ejectment.

And in the case of *Baltimore vs. Hood*, 62 Md., 378, the court said:

"When a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, its decision amounts to nothing. \* \* \* A void proceeding is so entirely vitiated as to be incapable of amendment. It has no effect whatever. Being absolutely null and void no person can justify under it."

#### IV.

*The record does not show any existing contract which can be enforced by specific performance against the appellant, or any contract binding the appellant existing after November 7, 1903.*

The contract of which specific performance is sought and which is quoted in the above statement of the case, after reciting the sale of the property, the terms, etc., provides:

"In case the remainder of the first half of the purchase price be not paid on November 7, 1903, then the said \$500 so paid to the said Griffith, is to be forfeited and the contract of sale and conveyance to be null and void and of no effect in law otherwise to be and remain in full force" (Rec., 322).

The Court of Appeals held that this was not an "option contract" and, therefore, notwithstanding its terms, and the fact that appellant failed to pay the purchase money at the time mentioned and abandoned his rights under the contract, the same continued in existence and might be enforced by the appellee. That the appellee had an option but the appellant had not.

Now, we submit, that it is of no material importance that a contract be called an option contract, a contingent contract, a self-terminating contract, or what not; the court is not controlled by any such designation, but by the intention and

meaning of the parties to be gathered from the terms of the contract. As this court said:

"The question always is, What did the parties intend by the language used? When such intention is ascertained it is ordinarily the duty of the court to carry it out."

*U. S. vs. Bethlehem Steel Co.*, 205 U. S., 119.

The language used is that in case the appellant should not make the first payment at the time specified then the \$500 deposited at the time of the execution of the contract should "be forfeited and the contract of sale and conveyance to be null and void and of no effect in law."

Nowhere does the contract provide that either the appellee or appellant shall have the option to consider the contract continuing, and enforce the same after the happening of the contingency, which the contract itself says shall terminate its own existence.

This contract being a Maryland contract, affecting lands in that State, must, of course, be construed and its meaning determined in accordance with the decisions of the courts and the laws of that State.

Now, what is the meaning of null and void and no effect in law? Words used in a contract must be given their ordinary meaning, and if technical words their technical meaning. The words "null and void" are technical words having a technical meaning, which is not different from the ordinary meaning, unless the context shows that the intention of the parties was that the primary technical, as well as ordinary, meaning should not be given to the words. In some cases where it is shown that the stipulation avoiding the contract is inserted for the sole benefit of one of the parties then the word "void" is considered to mean voidable. As in the case of landlord and tenant, where the lease provides that in the event the tenant shall fail to keep some of his covenants the lease shall become void—in such case, so far as the landlord, is concerned, it is voidable only. In a few States—for

instance California—where a contract for the sale of land provides that if the vendee fails to comply with his contract the deposit shall be forfeited and the contract become void, the courts hold that the word void means voidable and that the vendor has the right to enforce the contract upon default of the vendee. But we think an examination of the cases arising in those States will show that the language avoiding the contracts under construction therein is different from that contained in the present contract; but, if not, the decisions of those States do not control the construction of the contract under consideration.

It is sometimes said that the words "null and void" are synonymous, and for the purposes of this argument they may be so considered.

Now, the primary technical, as well as ordinary, meaning of the words is, without legal effect or force, incapable to bind parties or support a right.

29 Amer. & Eng. Ency. L. (2d ed.), 525.

And this meaning should be given to the terms of avoidance used in the present contract unless the context shows that a different meaning was intended. We cannot find that the contract discloses any such intention. There was no change in the position of the parties, except that the vendee gave up \$500 and the vendor was prevented from selling his land to any one else until the time of the contingency arrived. The vendor retained possession of the land and the vendee had no control over it whatever. There was no option beyond the date of the contingency given to either party and it is not apparent why "void" should be held to be "voidable." But the contract itself shows that the parties did not intend the result of the happening of the contingency to make the contract merely voidable, because they use not only the term "null and void," but added to it the term "and of no effect in law." This latter term must have had some meaning in the minds of the parties, as it has had in the minds of this court. In the case of the

*Pullman Palace Car Co. vs. Central Trans. Co.*, 139 U. S., 24, the meaning of the word "void" came under discussion. It was contended that it meant "voidable" only, and the court, to emphasize the meaning of the word void, intended as an absolute nullity, said, "It is not voidable only, *but void and of no legal effect.*" And the parties to the contract in this case, in order to show their intentions as to the avoidance of the contract, said it is not "null and void" only, but of "no effect in law."

That this was the understanding and intention of the vendor is strongly shown by the terms of his ratification of the said contract. By the provisions of the latter the appellant and the appellee, who was acting for the vendor on commissions, were obligated to each pay one-half of the costs of the survey of the land. Appellee was to pay his half out of his commissions and the appellant was to pay his half as an addition to the purchase price of the land.

Now, when the contract was submitted to the owner of the land for ratification what did he say? This:

"I, Alfred W. Ball, \* \* \* do hereby ratify and confirm the sale made by him (Griffith) to W. W. Stewart of my real estate near the Meadows, Pr. Geo. County, Md. This is with the understanding that if said sale is consummated and one-half of the purchase money be paid in cash, that Dr. L. A. Griffith my agent and attorney, shall pay out of his commissions one-half the cost of surveying and attorney's fee, the other half by W. W. Stewart, otherwise I am to pay the cost of surveying and attorney's fees." (Rec., 80).

Now, this, we submit, is conclusive proof that the vendor contemplated that the sale might not be consummated, and in that event, not only was the contract to terminate and the appellant to be relieved from any further obligations under the contract, but he, Ball, was also willing, and so stipulated, to relieve the appellant from paying one-half the costs



of the survey. He would be so satisfied with the forfeiture of the \$500 and the retaining of his land, that he thought it right that appellant should not be compelled to pay one-half of said costs, which the latter might be compelled to do even though the contract should terminate. There is nothing in the context of this contract to show that the terms of avoidance used therein mean voidable and not absolute void.

In the case of *Cherry vs. Stein*, 11 Md., 1, the meaning of the terms of avoidance of a contract for the sale of real estate came before the court for determination. The contract begins by saying, "I have this day purchased from C. R. Tate, administrator," and concludes with "this sale to be null and void in case the whole square, as advertised, shall be sold together, otherwise to remain in full force." The court said: "Such an instrument constitutes a valid and effective sale, subject to become a nullity upon a single contingency."

And the Court of Appeals, in its opinion in the present case, to substantiate its holding that the contract in question is not an "option" contract and did not terminate upon the default of the appellant in making his payment, but continued in existence at the election and for the benefit of the vendor, refers to and quotes from the case of *Hazelton vs. Le Duc*, 10 App. D. C., 379. That case instead of supporting the court's contention refutes it, and shows the different construction to be placed upon a contract of sale which provides for the forfeiture of the deposit merely, and one which, providing for the forfeiture, also declares that the contract shall become null and void. In that case the language of the contract was, "terms of sale to be complied with in fifteen days or deposit hereby made will be forfeited." In commenting upon these terms the court construing the same said: "The only construction that can reasonably be put upon this language is that the parties intended and understood that there was a present sale \* \* \* these words not an option of purchase, they were inserted for the benefit

of vendor \* \* \* it gave him an option of treating it as void and retaining the two hundred dollars." And then to show that said construction did not conflict with the court's decision in the previous case of *Jones vs. Holliday*, 2 App. D. C., 279, wherein the contract was held to be an option, and referring to the latter contract, the court said: "Because the provisions of the contract were positive and unqualified that upon failure of the vendee to comply with the terms of sale, the contract was to be null and void."

We submit that there can be no doubt as to the meaning of the avoiding clause of the contract, and that when the contingency happened the contract terminated and has since had no existence.

But if there should be any doubt, then the conduct and conversations of the parties and their agents maintain our contention.

Where there is a doubt as to the meaning of a contract, the construction put upon it by the parties themselves is entitled to consideration. And the court will look to the language employed, the subject-matter and the surrounding circumstances and evidence of these matters is admissible.

*Varnun vs. Thurston*, 17 Md., 471.

*Roberts vs. Bonaparte*, 73 Md., 191.

*U. S. vs. Bethlehem Steel Co.*, 205 U. S., 118.

And the acts and declarations of agents of the parties in the course of their employment are admissible.

*Main vs. Aukum*, 12 App. D. C., 375.

The appellant testified, "I stated to Dr. Griffith that we would like to get a lease. He said he was afraid the Balls would not lease. Then I suggested, 'Doctor, couldn't we get an option on the land, paying down \$250 and making the time six months?' He said he did not know whether that could be perfected or not, but that if we paid \$500 down we might get an option" (Rec., 151). Leapley testified that ap-

pellant wanted an option and the parties settled on \$500 (Rec., 88). The appellee testified that he and appellant had talked about an option, "that is, whether he could pay so much with the right of forfeiture. I had objected to anything of the sort" (Rec., 92). Roberts, appellee's attorney, testified that the first agreement which was signed by Thomas and Griffith was drawn up by Thomas. "It was understood that there was to be a further agreement which I was to draw. I did" (Rec., 61). In the agreement drawn by Thomas the forfeiture clause was: "is to be forfeited, and the contract of sale and conveyance to be null and void and of no effect" (Rec., 12). In the agreement drawn by Roberts he wrote "null and void and of no effect *in law*." (Rec., 322), thus showing that his particular attention was given to this clause, and, being a lawyer, he must have construed its meaning to be, and so informed his client, the same as he construed the meaning of another contract of sale for a portion of this very land which his client had entered into with other parties. In the abstract of title furnished by him he refers to this latter contract as follows: "This agreement was dated March 11, 1902, and was to be of no effect and virtue if the parties failed to pay for the same (the land) within 6 months from March 11, 1902, which Mr. Ball says they did not do, so if that be correct and it must be so, the said contract is of no virtue in law" (Rec., 119).

That was his opinion of the meaning of such terms expressed five days after the making of the contract in suit. He further testifies that after Thomas had drawn up the contract he was called in by Dr. Griffith and went over the contract with Griffith and Thomas and told them it was all right (Rec., 61). Griffith further testifies that at the time of signing the contract he asked Thomas what he meant "by this in here—\$500 if not paid"—and Thomas said, "If he had another offer for the property and Dr. Stewart refused to comply with his terms that I could have an option and I could force him or I could make him forfeit the \$500"

(Rec., 49-50). Thomas denies the truth of this statement and says, "I simply said that meant that if the money was not paid on the 7th of November, the \$500 would be forfeited; that the whole matter was a gamble" (Rec., 114). Flynn testified that Ball told him that he had sold the land to the oil company and a certain amount had been paid him, and that if they did not pay the balance on a certain day he would consider it no sale (Rec., 212). Ferguson testified that Ball told him that if the company didn't settle on the 7th of November he would not give them three minutes after that day (Rec., 213). Harrison testified that Ball said that if the purchaser did not take the land he had the \$500 (Rec., 117). Branson testified that Ball told him that he had sold the land to the company on a payment of \$500, and the balance was to be paid at a certain time, and unless it was they forfeited the \$500 and the contract became void (Rec., 218). Appellant testified that when the contract was presented to him for signature "I looked at the option part of it and saw it was there and it seemed all right to me. \* \* \* Then I signed the contract" (Rec., 155).

So that it is quite certain that all these parties in interest understood that if the first payment was not made on November 7 the contract would become void and ended. It is immaterial whether it be called an option or anything else; the facts remain that Ball and appellant and the agents understood that upon the appellant's default Ball should keep his land freed from the contract and put the \$500 in his pocket and do what he pleased with it, except that he was to relieve the appellant from paying one-half of the costs of the survey and attorney's fees. In the case of *Cathcart vs. Robinson* (5 Pet., 264), wherein a bill for the specific performance of a contract to purchase land was filed by the vendor against the vendee, who had refused to comply with the terms of his contract, it appears that the terms of the

contract show an absolute, unqualified purchase and sale; no provision for forfeiture or that upon the vendee's failure to make the prescribed payments the contract should become null and void. It contained the following provision: "In further confirmation of the said agreement the parties bind themselves each to the other in the penal sum of one thousand dollars." The vendee contended that this provision was understood by the parties to mean that in case the vendee defaulted the payment of the penalty satisfied the contract and put an end to it, so that the vendor would not thereafter have the right to enforce the contract. The vendor contended that the default and payment of the penalty did not terminate the existence of the contract. Testimony dehors the contract was taken to show the intentions of the parties, and the court admitted and considered the same and held that as the evidence showed that the understanding was that the penalty was to be accepted in full satisfaction of the contract should either party default the court would decline to decree specific performance.

But for the purpose of argument assume that the contract was not self-terminating—that Ball had the option to say whether he would or not enforce the contract after the 7th of November—that such option devolved upon the appellee, as executor, then we submit that the letter of the appellee to the appellant of November 10 terminated that option and the contract. In that letter he says: "I have consulted two lawyers and am satisfied that I am fully authorized \* \* \* to complete the sale. \* \* \* If you do not meet the requirements and satisfactory arrangements are not made before Monday, the 16th, at 12 o'clock, consider the matter ended." In response to this nothing was done by appellant.

To avoid the effect of this ending of the alleged optional right the appellee contends that as he had not then received his letters testamentary his action was without authority and not binding upon him.

Section 48, art. 93, of the Maryland Code provides:

"No executor named in a will shall, before letters testamentary be granted to him, have any power to dispose of any part of the estate of the deceased, or to interfere therewith further than is necessary to collect and preserve the same; but any act of an executor named in a will done before obtaining letters testamentary shall, in case he shall afterwards obtain such letters be as valid and effectual as if said act had been done after obtaining such letters."

The appellee in his bill alleges that after the death of Ball and the termination of the contract further negotiations were had with the appellant looking to a carrying out of the contract, and that the appellant disclaimed that he desired any forfeiture of the same and expressed a willingness to take the land and pay for it in accordance with the terms of said contract, provided the appellee could convey a good title. The appellant in his answer denies these allegations and pleads the statute of frauds as a defense to all these alleged verbal transactions; and further avers that in all the conversations between himself and the appellee, the latter was distinctly informed that he, appellant, had been and was then acting for the oil company and not for himself, and that if any purchase of the land should be thereafter made it would be for said company and not for himself (Rec., 43).

We have heretofore, in the statement of facts, called attention to the contradictory testimony in the record as to whether the appellee or his principal, Ball, knew, at the time of the execution of the contract on June 6, 1903, that the appellant was acting in behalf of the oil company. We think the testimony establishes the affirmative of the proposition, but whether or not the court so finds, there is no dispute of the fact that the appellee, when he first sought to revive the matter of the sale of the land, was informed and knew that the appellant was acting for the oil company and not for himself. The appellee himself testifies that when he called on the appellant on November 9, 1903, the latter in-



formed him that the land had been bought for the oil company (Rec., 56). And all through the record the evidence, both documentary and verbal, shows that the position of the appellant in regard to the renewed negotiations was that of agent for the company, and that the appellee was so informed. Also that A. W. Thomas, the attorney for the company, was in all these negotiations acting in behalf of company and not for the appellant. It would be an unnecessary waste of time to quote the testimony of the witnesses as to this fact, as the statement of the case refers to pages of the record where such testimony may be found.

The only evidence in writing bearing upon these renewal negotiations is, in substance, as follows:

The next day after appellee visited appellant (November 9), when he was informed that the sale was a company matter, he wrote appellant a letter in which he said:

"I have consulted two lawyers and am satisfied that I am fully authorized and empowered to complete sale of land and give deed. It rests with you. Please let me know positively on or before Monday next (16th) what you intend to do. There is a proposition on hand from other sources. \* \* \* I will make private arrangements at once for the disposition of it if you do not take it. If you do not meet the requirements and satisfactory arrangements are not made before Monday, the 16th, at 12 o'clock, consider the matter ended" (Rec., 162).

The appellant made no arrangements.

The next written evidence is the letter from appellant to appellee of November 23, 1903, in which the former says that he had received the order of the orphans' court of November 17th; that the agreement was entered into on behalf of the oil company; all parties so understood; is advised by the company that the death of Ball renders further steps to be taken to complete and pass title; that he has no personal interest in the matter and does not assume any personal liability; that the agreement remains to be consummated be-

tween the appellee and the company, adjust the matter with the company (Rec., 164). In reply the appellee said that he knew nothing about the company, but would deal with appellant; that he stated it was his private enterprise (Rec., 164).

The next written evidence is the letter of Thomas, as the company's attorney, to Roberts, the appellee's attorney, dated November 23, 1903, in which he says that he had examined the order of the orphans' court and the will of Ball, and that it does not appear to him that the court had jurisdiction to make the order, or that title can be vested in the purchaser under the agreement or under the will of Ball by means of such order; that the death of Ball has produced complications which necessitate the taking of steps other than those contemplated in the order to furnish a good title to the purchaser. The agreement should stand pending the completion of perfect title. Have so advised the Maryland Oil Company, the real party to the agreement, Dr. Stewart being the nominal party (Rec., 117).

The next written evidence is a letter from Thomas to Ambrose, an attorney of appellee, in which the former sets forth his objections to the title as shown by the abstract furnished him (Rec., 319).

Now, the above is the substance of all the documentary evidence in the record relating to the attempted revival and carrying out of the contract, and we submit that it is not sufficient or competent to bind the appellant for the reasons:

*First.* That it proves, if anything, that all parties were informed that the oil company, and not the appellant, was the party seeking to purchase the land, and that after such information the appellee continued his negotiations.

*Second.* That the oral testimony given in connection with the negotiations is not competent or sufficient under the prohibitions of the statute of frauds to prove a contract of purchase of real estate entered into by appellant.

In the case of *Dunphy vs. Ryon* (116 U. S., 491), where the contract for the sale of lands was verbal and a bill filed for specific performance, the court said: "A contract void by statute cannot be enforced directly or indirectly." "It confers no right and creates no obligation as between the parties to it." "The mere breach of a verbal promise for the purchase of lands will not justify the interference of a court of equity." "The party who so refuses stands upon the law and has a right to refuse."

*May vs. Rice*, 101 U. S., 231.

## V.

*The record shows that the heirs of Alfred W. Ball are indispensable parties to this suit.*

This assignment of error involves a consideration of—

A. The effect of the execution of the said contract upon the real estate in question.

B. The respective interests and titles of the heirs of Ball and of the appellee, as executor, in and to the land in question, arising upon the death of Ball.

C. The effect of the alleged probating of the will of Ball upon the right of the heirs to subsequently assert and enforce their claims in the courts against any grantee from the said executor.

A. The appellee contends, and the Court of Appeals, in its opinion, declared the law to be, that "the sale effected a conversion and thereafter Ball held the land as trustee for the defendant; that, upon the execution of the contract, Ball's interest, as represented by the unpaid balance of the purchase price, became personalty or a chose in action and passed to the executor as such."

Is this declaration a correct construction of the effect of the contract of sale upon the title to the land and its character, as being money or land?

It is undoubtedly true that the courts hold that an ordinary, completed contract for sale of real estate, or a positive direction in a will that the real estate of the testator be sold, works a conversion of the real estate into money and vests title to the latter in the executor as against the heirs. But not every contract of sale or every direction to sell in a will works such conversion; and as the doctrine of equitable conversion is purely a creature of courts of equity, such courts are very strict in their requirements as to what the terms of such contracts shall provide in order to change the character of the real estate and divest the heirs of their title to the land.

"The rule is therefore firmly settled that in order to work a conversion while the property is yet actually unchanged in form, there must be a clear and imperative direction in the will, deed or settlement, or a clear, imperative agreement in the contract to convert the property. If the act of converting is left to the option, discretion or choice of the parties, then no equitable conversion will take place, because no duty to make the change rests upon them."

3 Pom. Eq. Jur., Sec. 129.

The above is in harmony with the decisions of the courts of Maryland, which decisions must be controlling so far as the contract in the present case is concerned.

In *Lynn vs. Zephart* (27 Md., 547) the court said:

"The inclination of courts of equity upon this branch of jurisprudence, is not generally to change the quality of the property unless there is some clear intention or act by which a definite character either as money or as land has been unequivocally fixed upon it throughout. If this intention does not clearly appear the property retains its original character."

"Courts of equity will regard the substance and not

the mere form of the agreement and give to it the precise effect which the parties intended."

As in *Kellar vs. Harper* (64 Md., 74) the court said:

"In order to work a conversion there must be an imperative and unequivocal direction to sell the real estate. *And when the sale is dependent upon a contingency, there is no transmutation until the contingency happened.* Another important rule is that the courts are averse to sanctioning a change in the quality of an estate, and if there is any doubt as to the intention of the testator the original character of the property will be retained."

And it is further held by the Maryland courts that in the case where the court appoints, by its decree, a trustee to make sale of real estate and the trustee sells the property no conversion takes place until the court ratifies the sale and the purchaser pays the purchase money.

*Dalrymple vs. Taneyhill*, 2 Md. Ch., 125.

*Jones vs. Plummer*, 20 Md., 416.

As in a case where the testator directed his real estate to be sold and the proceeds applied to a special purpose, and that purpose became incapable of taking effect, the court held that no conversion took place and the title to the real estate resulted to the heir at law. "The heir is not to be excluded in favor of the next of kin or the residuary legatee by mere implication or intendment, nothing less than clear, substantive and undeniable intent on the part of the testator will exclude him."

*Rizer vs. Perry*, 58 Md., 112.

Now apply the above principles to the contract in the present case and it must clearly appear that the execution of said contract did not work a conversion of the real estate into personalty. The contract is not imperative, unequivocal and unconditional. Its consummation depended on the happen-

ing of a certain contingency, to wit, the payment of the first half of the purchase money by the appellant, or upon his default, admitting for the purpose of argument, the election of Ball to declare the contract binding and enforce its performance. That he had no intention to so elect is apparent from the terms of his ratification of said contract, wherein he says: "This is with the understanding that if said sale is consummated and one-half the purchase money be paid in cash, that Dr. L. A. Griffith, my agent and attorney shall pay out of his commission one-half of the costs of surveying and attorney's fee—the other half by W. W. Stewart—otherwise I am to pay the costs of surveying and attorney's fee" (Rec., 311). This ratification clearly shows that he understood the contract not only to be not imperative or unconditional, but that it might never be consummated; and in that event that he intended not only to make no election to insist upon the performance of the contract by the appellant, but to relieve him, appellant, from paying one-half the cost of the survey and the attorney's fee. Ball never intended by the ratification of said contract that his land should be converted into money and the character of the title to the land changed. When he died the land was in contemplation of law and in fact real estate; the contingency which would work a conversion had not occurred.

"Where a conversion of land into money or money into land is directed \* \* \* by an instrument *inter vivos* and the purpose and object for which such conversion was intended fails before the directions for a conversion are carried into effect, the property thus directed to be converted will remain in its original condition; it will result in its original unchanged form to the heirs or to the personal representatives, \* \* \* as the case may be. If land is to be sold and converted into money, the property results as real estate to the heirs."

3 Pom. Eq. Jur., 138, 141.



Until the appellant had made his first payment under the contract, or, in the event of his default, until Ball had made his election, assuming that he had the right so to do, to enforce the contract there could be no equitable conversion.

3 Pom. Eq. Jur., 132.

30 Beav., 206.

White's Estate, 167 Pa. St., 206.

Edward *vs.* West, 7 Ch. Div., 858.

Smithers *vs.* Loehenstein, 50 Ohio St., 346.

B. The respective interest and title of the heirs of Ball and of the appellee, as executor, in and to the land in question arising upon the death of Ball.

Now whatever title or interest the appellee may have in the land in question must be derived from one of two sources, viz, either from the will of Ball or from the fact that Ball did not own said property as real estate, but owned a mere right of action respecting the same which devolved upon appellee as executor.

As to the first source, the appellee testifies that the real estate referred to in the will of Ball did not include the land in question, but referred exclusively to a farm which Ball had inherited from his brother (Rec., 48). For the purposes of this branch of the argument we will accept that statement.

As to the second source, we know of no law of Maryland that empowers an executor, as such, to deal with the real estate of his testator, except, upon proper showing made to the court and authority therefrom to sell the same, as may be necessary for the payment of debts and legacies, nor is there any law authorizing an executor to carry out and enforce contracts for the sale of land made by his testator, except in the one instance heretofore discussed. But the appellee herein contends that, as Ball at his death had no interest in the land as land, but merely held the legal title as trustee for the appellant, the only estate which he left growing

out of the contract for sale was that of a creditor of appellant to the extent of the amount of the purchase money, and that under the law this estate (being a mere chose in action) devolved upon him and gives him the right to sue for a specific performance without reference to any rights the heirs may have in the premises.

And the Court of Appeals in its opinion assumes a similar position. It says:

"Under the sale, the land became the property of the defendant (appellant) and the agreed purchase price became the property of Ball. In equity Ball held the land as trustee for defendant, and the defendant held the purchase price as trustee for Ball. \* \* \* Hence the contract, a mere chose in action, passed to plaintiff as executor" (Rec., 403.)

And the court refers to the case of *Lewis vs. Hawkins*, 23 Wall., 119, as sustaining its holding. An examination of the contract in that case will show that in its character, completeness, and freedom from all contingencies it differs entirely from the contract of Ball. There Hawkins purchased certain lands from Lewis and gave him his promissory notes representing the purchase price, and in return Lewis executed a bond for a deed. And in that case this court said:

"Upon the execution of the notes and the title bond between Lewis and Hawkins, Lewis held the legal title as trustee for Hawkins and Hawkins was a trustee for Lewis as to the purchase money. \* \* \* The securities for the purchase money are personalty and in the event of the death of the vendor go to his personal representative."

This was a very different case from the one at bar. There there was no provision of forfeiture; here there is. There there was no provision that in the event the purchaser should fail to make his payment the contract should become null and void and of no effect in law; here there is. There notes

of the purchaser representing the amount of the purchase price were not only executed, but also, as the statement of facts by the court in its opinion shows, actually given to the vendor, and the latter's bond for conveyance given to the purchaser; here no notes or other instruments representing the purchase price were given, or even executed, to the vendor, and no bond for conveyance was given in return: all was *in futuro*, depending upon the happening of a contingency—either the payment of the first half of the purchase price by the appellant or, as appellee contends, the election by Ball to enforce the contract. There the contract was absolute, complete, and dependent on no contingency; here the contract was contingent, subject to become void by the act of the appellant or of Ball or of both. There are many decisions to the same effect as that in *Lewis vs. Hawkins*, and we are not here contending that they are incorrect, but what we do urge is that they have no application to the facts in this case. The distinction that we contend for has been declared by the courts in other cases.

In *Boone vs. Chiles* (10 Pet., 177) the court said:

“If the vendor has actually made a conveyance his title is extinguished in law as well as in equity; if he has sold, but has not conveyed, his contract of sale binds him to convey, *unless it be conditional*.”

The true principles of law respecting the respective rights and titles of Ball and the appellant in the subject-matter of this controversy, we submit, were declared by this court in the case of *Jennison vs. Leonard*, 21 Wall., 302. The court there said:

“This was one of the sales of real estate by contract, so common in this country, in which the title remains in the vendor and the possession passes to the vendee. The legal title remains in the vendor, while an equitable interest vests in the vendee to the extent of the payments made by him. As his payments increase his equitable interest increases, and when the con-

tract price is fully paid, the entire title is equitably vested in him, and he may compel a conveyance of the legal title by the vendor, his heirs or assigns. The vendor is a trustee of the legal title for the vendee to the extent of his payments. The result of this state of things is quite unlike that of a conveyance subject to a condition subsequent which is broken, and when re-entry or a claim of title for condition broken is necessary to enable the vendor to restore to himself the title to the estate. The legal title having in that case passed out of him some measures are necessary to replace it. In the case of a contract like that we are considering no legal title passes. *The interest of the vendee is equitable merely, and whatever puts an end to the equitable interest—as notice, an agreement of the parties, a surrender, an abandonment—places the vendor where he was before the contract was made.*

“No mode of terminating an equitable interest can be more perfect than a voluntary relinquishment by the vendee of all rights under the contract, and a voluntary surrender of the possession to the vendor.”

Now, in the case at bar it will be observed that the appellant never had possession of the land. Under the terms of the contract Ball was to retain possession of the premises until the contract should be consummated and the contingency eliminated by the appellant making his first payment. It is neither in consonance with law or reason to hold that because of the mere deposit of \$500, which in a certain contingency was to be forfeited to Ball, Ball held the whole legal title in trust for the appellant. Ball's trusteeship, at the most, extended only to appellant's interest of \$500, and when that was forfeited the trusteeship wholly ended, and Ball's title became the same as it was before the contract was entered into, a title to the land, as land. And if this land is not included in the will, as the appellee asserts, then it descended to the heirs at law of Ball, and the executor has no interest in the same, and has no right to file his bill for a specific performance of the contract.

Now, if the contract did not become null and void when the appellant defaulted, and if Ball, had he lived, would have the privilege of electing whether he would or not enforce specific performance, all whereof we do not concede, then as the legal title descended to the heirs, they and they alone are the persons entitled to exercise the election. They have the right to be heard on the question as to whether the contract is an existing one, and as to whether the appellee as agent, and he says his agency was terminated by Ball's death, is entitled and shall be paid any commissions for his services in the matter. It is immaterial whether they might or might not be successful in any claims that they might make, yet they are entitled to be heard, to have their day in court.

Now, if the heirs of Ball have no interest in this land as real estate, because it is embraced in the will, nevertheless the appellee is not entitled to maintain this suit for specific performance because the will expressly directs how the executor shall dispose of the real estate; and he is bound to pursue strictly the course therein prescribed. He gets no title to the land except by virtue of the will, and then only such title as is necessary for him to carry out its provisions.

The will provides: "I do hereby further direct, authorize and empower him, the said Lewis A. Griffith, my executor, to sell my real estate of which I may die seized and possessed at the time of my death wherever the said real estate may be situate, at public sale after one month's notice by due publication of said sale and of the time, place, and manner of said sale, the said real estate to be sold upon such terms and conditions as my executor shall deem proper and expedient" (Rec., 13). The will then proceeds to direct the manner in which certain legacies out of the proceeds of sale shall be made, and names a number of the testator's heirs, and further provides that if certain heirs whose whereabouts

are unknown shall appear they shall be admitted to share in the proceeds.

Now, clearly the appellee cannot deal with the real estate in any other method than is provided for by the will, and the bill for specific performance filed by him in this cause is not a method provided.

And, again, assuming that there was a conversion at the date of the contract of sale, and that Ball held the legal title in trust for appellant, and that the purchase money became a part of Ball's personal assets and, upon his death, became vested in appellee, as executor, yet the title to the real estate descended to Ball's heirs, and they are the only persons who could make a valid conveyance of the title to the appellant.

1 Pom. Eq. Jur., sec. 368.

C. The effect of the alleged probating of the will of Ball upon the right of the heirs to subsequently assert and enforce their claims in the courts against any grantee from the said executor.

The appellee claims that the will was duly admitted to probate and he appointed executor thereof by the orphans' court. We have heretofore attempted to show that the whole proceeding before the said court was a nullity and that the court was without jurisdiction in the matter. But, for the purpose of argument, assume that the will was duly admitted to probate and the appellee's appointment as executor valid, then what effect do such proceedings have on the rights of the heirs? When Ball died all his property descended to his heirs and continued vested in them until the will was probated. Without such probate they would now be the holders of the legal title to the estate; and as the effect of the will and its probating was to divest them of their title, before such divestiture can legally take place they have a right to their day in court. The Maryland Code, to which we have

heretofore called attention, expressly provides for the saving and enjoyment of such right of the heirs.

The Maryland courts, in many cases, have declared the effect of the probate of a will upon the rights of heirs.

In the case of *Johns vs. Hodges* (62 Md., 525, 537), it was decided that probate of a will is only *prima facie* evidence of such will so far as it concerns real estate. The court said:

"However conducive to public and private convenience it would have been to make the probate proceedings conclusive for all purposes, the legislature has not seen fit to make them so, but has made the exception noted. \* \* \* In effect we think the saving by implication declares that without probate the will shall *not* be *prima facie*. But inasmuch as probate may have been improperly secured, the heirs, who, in natural order but for the will would have succeeded to the title and possession, shall not be precluded from attacking the probated will."

In *Clagett vs. Hawkins* (11 Md., 381) it was held that not even an express satisfaction of the genuineness of the will and acceptance of legacies thereunder will bar a contest if the probate was without contest.

And in *Levy vs. Levy* (28 Md., 25) that any person interested may file a petition contesting the validity of the will.

*O'Neal vs. Smith*, 33 Md., 574.

And in the case of *McArthur vs. Smith* (113 U. S., 340), where a will was probated and the probate afterwards set aside without making some of the persons who took under the will parties to the proceedings to set aside the probate, upon a bill filed by such persons to enforce their rights under the will, the court held that the proceedings were not binding upon them, and said: "All persons interested in a suit in equity and whose rights will be directly affected by the decree must be made parties to the suit unless they are too numerous or out of the jurisdiction of the court, but the decree must be without prejudice to the rights of those who



are not made parties and who do not come in before decree."

And if persons cannot be reached by process the bill must be dismissed.

Ribon *vs.* R. R. Co., 16 Wall., 446.

Gregory *vs.* Stetson, 133 U. S., 579.

In the case of *Shields vs. Barlow* (17 How., 130) it was held that persons having rights which must be affected cannot be dispensed with. And the court said: "In *Morgan's Heirs vs. Morgan*, 2 Wheat., 290, a bill was brought by the heirs of a deceased vendor to compel the specific performance of a contract to purchase lands. It was objected that the deceased had a child who was not made a party. Chief Justice Marshall said: "It is unquestionable that all coheirs of the deceased ought to be made parties to the suit either plaintiff or defendant, and a specific performance ought not to be decreed until they shall all be before the court."

We therefore submit that the heirs of Ball are indispensable parties to this suit, because:

First. There was no conversion of the land and the heirs hold the legal title, and the appellee, as executor merely, has no interest or title in the land.

Second. If the land passed under the will of Ball, or even if the interest of Ball became a mere chose in action in the custody of the appellee, who is entitled to enforce the same, yet the heirs are necessary parties; because the probate of the will is only *prima facie* evidence of its validity, and it may be attacked at any time by the heirs, and the appellant as grantee of the appellee will be subject to attack by the heirs, and his title, unless the heirs are made parties, will at the most be a mere *prima facie* title.

Third. Even if there was a conversion, yet Ball held the legal title, and that title descended to his heirs, and they are

the only persons who can make a valid conveyance of the title to the land.

## VI.

*The record shows that the deed alleged to have been tendered the appellant does not convey a good, fee-simple title to the land involved free from all liens and encumbrances.*

A copy of the deed alleged to have been tendered the appellant is found on page 25 of the record. This deed names as grantor Dr. Lewis A. Griffith, of Prince George's County, Maryland, executor of Alfred W. Ball. It then recites the power of attorney from Ball to appellee, authorizing him to negotiate the sale of the land in question, and that appellee did negotiate the sale of same with appellant, and executed the contract of sale of June 5, 1903; that the completion of the said agreement of sale was to be carried out on November 7, but Ball died on November 6; that Ball had in the meantime executed his last will, in which he appointed the grantor executor thereof, and that the latter has duly probated said will; that said grantor, as executor, did, on November 17, 1903, file his petition in the orphans' court of Prince George's County, in which he recited the sale by him as attorney for Ball; that Ball died leaving a last will, in which grantor was named as executor, without having conveyed the said property to Stewart, and asking the court to pass an order authorizing him as executor to execute, acknowledge and deliver a deed for the property to said Stewart; that the court on the 17th of November, 1903, passed its order authorizing the executor to convey the said property upon the payment of the residue of the unpaid installment of the purchase money as agreed upon in said agreement; and whereas the said grantor, for the purpose of complying with and carrying out the said order of the said orphans' court in the premises, is willing to execute this indenture: Now this indenture witnesseth that the said

Griffith as executor, for and in consideration of the premises as aforesaid, and the further consideration of the payment to him of the purchase money for said land, doth grant, etc.

The heirs of Ball do not unite in this deed.

Now the sole authority for the appellee to make this deed as recited therein is the order passed by the orphans' court. The deed recites that the order was passed on November 17, while the record shows that it was passed on December 15, 1903.

This order was a mere nullity and could give the grantor in the deed no authority to make the conveyance, and as the deed recites that the same was made for the purpose of carrying out the order of the court, it was not a valid deed and could pass no title, and the tender of the deed was not a good, sufficient tender.

Besides, as we have shown, the grantor had no title to the property which he could convey. The heirs were necessary parties to the conveyance. If the land be held to be embraced in the will of Ball, and the executor thereby became vested with authority to sell and convey the land, he must pursue the course prescribed by the will. In no other way could he dispose of the land, and no court could authorize him to make sale and conveyance in any other manner.

We submit that no tender of a valid deed was made to the appellee.

## VII.

*The case made by the record is not of that completeness as to justify the court in decreeing specific performance of the alleged contract.*

The said contract provides that the grantor "agrees to convey by proper deed or deeds of conveyance in fee simple free and clear of all liens and encumbrances of every kind and nature" (Rec., 231).

The appellee contends that the title he offers to convey to

appellant complies with these requirements of the contract. The appellant contends, among other things, that the appellee is not able to pass such a title because the appellee executor, as such, has no title to the land. Under the will, if the land in dispute be embraced therein, the appellee, as executor, is not expressly vested with any title to the land, but is given only a power to sell and convey the land in a certain manner, which power he has not exercised in this proceeding, and does not claim that he instituted this suit by virtue of said power. Upon Ball's death his heirs became vested with the title to his estate, and have never been divested thereof; the alleged will of Ball never was legally probated, because the record shows that the orphans' court never had jurisdiction of the matter, and until the will became legally probated the court had no power to appoint an executor thereof. Admitting that the will was legally probated, yet the proceedings were solely *ex parte*, without contest or notice to or the appearance of the heirs, and the probate is merely *prima facie* evidence of the validity of the will. The validity of the will, the legality of the probate proceedings, the right of the executor to enforce the contract of sale and the legality of any deed that the executor may make are all subject to the attack of the heirs, any or all of them, in the courts. If the court should decree specific performance and this appellant be compelled to take a deed from the appellee such deed and the title of the appellant thereunder would be liable to as many suits to determine the validity of the title as there are heirs.

These contentions being facts can the appellee convey such title to the land as the contract calls for?

In the case of *Adams vs. Henderson* (168 U. S., 573, 580-1) the issue was whether the purchaser under a contract for sale of real estate was bound to accept a deed tendered by the vendor, the purchaser claiming that the vendor could not convey the title stipulated for in the contract. The seller's title was encumbered with the right of a railroad company

to pass over and across the land for the purpose of prospecting for and mining minerals other than coal. The sellers contended that it cannot be assumed, in the absence of proof, that the purchaser would likely be disturbed in the full and complete enjoyment of the land for every purpose for which it is adapted. The court held that the purchaser was not bound to accept the deed and said:

"A good and indefeasible title in fee imports such ownership of the land as enables the owner to exercise absolute and exclusive control of it as against all others. \* \* \* The plaintiffs in effect ask that, instead of a good and indefeasible title in fee simple, the defendants shall take and pay for land encumbered. \* \* \* A court of equity could not compel the defendants to take and pay for land thus encumbered without making for the parties a contract which they did not choose to make for themselves. \* \* \* What the defendants are entitled to is a marketable title—a good and indefeasible title in fee; but that they will not obtain if forced to take the land subject to the railroad company's right of way over it."

In the case of *Gill vs. Wells* (59 Md., 491, 493-5), which was a suit for specific performance of a contract of sale brought by a vendor, who had purchased the land from a trustee appointed by the court and directed to make sale, which was made and the same approved, against the purchaser, a minor daughter inherited the land which was subject to her mother's dower right. The mother, as guardian, petitioned the court to authorize a sale of the land, and the court ordered the land to be sold. A deed was given by the court's trustee to the purchaser under this sale who went into possession. The defendant in the suit refused to accept a conveyance claiming that the order of the court and the sale thereunder to the plaintiff were void; the court so held and denied specific performance, because the law did not empower the court to authorize the sale of the ward's estate;

and declared the title still in the ward, and that a deed from her was necessary to perfect the title. The court said:

"The vendee is entitled to have that for which he contracts, before he can be compelled to part with the consideration he agreed to pay. He is not bound to take an estate fettered with encumbrances, by which he may be subjected to litigation to procure his title; and in a contract such as is sought to be enforced in this case, the vendee is not bound to accept anything short of an unencumbered legal estate in fee, the title to which is free from reasonable doubt. \* \* \* The decree of the court \* \* \* binds only those who are parties to the suit, and those claiming under them, and in no other way decides the question in issue as against the rest of the world. \* \* \* If, therefore, there be any reasonable chance that some third person may raise a question against the owner of the estate after the completion of the contract, the court considers this to be a circumstance which renders the bargain a hard one for the purchaser, and one which in the exercise of its discretion it will not compel him to execute. \* \* \* Every purchaser of land has a right to demand a title which shall put him in all reasonable security, and which shall protect him from anxiety, lest annoying, if not successful, suits be brought against him, and probably take from him or his representatives land upon which money was invested. He should have a title which shall enable him not only to hold the land, but to hold it in peace; and if he wishes to sell it to be reasonably sure that no flaw or doubt will come up to disturb its marketable value."

And, in the case of *Wesley vs. Eells* (117 U. S., 376, 376, 377) this court held in effect as follows:

A defendant in a suit brought for the specific performance of an executory contract will not be compelled to take a title about which doubt may reasonably exist, or which may expose him to litigation. Specific performance will be denied when it would impose upon the defendant the necessity of bringing

suit to perfect his title. It is not necessary that he should satisfy the court that he ought to prevail at law in any suit affecting the title; it is enough if the title appears to be subject to adverse claims which are of such a nature as may reasonably be expected to expose the purchaser to controversy to maintain his title or rights incident to it. He ought not to be subjected to the necessity of litigation to remove even that which is only a cloud upon his title. Courts of equity do not force the purchaser to take anything but a good title, and do not compel him to buy law suits.

Watts *vs.* Waddell, 6 Peters, 389.

Dundas *vs.* Auld, 5 Cranch, 262.

Emmert *vs.* Stauffer, 64 Md., 543.

McCaffrey *vs.* Little, 20 App. D. C., 116.

Railroad Co. *vs.* Winslow, 18 App. D. C., 453.

These principles, controlling courts of equity, are especially applicable to the case at bar, because the Supreme Court of the District has no jurisdiction over the land, and its decree cannot affect the title to the land or operate as a conveyance thereof. And the courts of Maryland would not recognize such decree as binding upon them or upon any parties who may have an interest in the land. Such decree can operate only *in personam*, and no one not a party to the suit can be in any way bound by it. Ball's heirs would not be estopped by it from asserting their claims, and in a suit by them against the appellant, either at law or equity, such decree could not be pleaded as an estoppel or otherwise, and would not even be admissible in evidence.

Corbett *vs.* Nutt, 10 Wall., 464.

Hart *vs.* Sansom, 110 U. S., 151.

Carpenter *vs.* Strange, 141 U. S., 87.

And, finally, we submit that if the right of the heirs of Ball to attack the validity of the will and, consequently, the title of the executor and his right to make a conveyance were the only question in the case, it would be sufficient to deter this court from decreeing specific performance of the contract against the appellant.



### Conclusion.

From these considerations it thus appears that the record presents the following insuperable objections to the right of the appellee to have specific performance of the contract under consideration, and consequent error in the decree of the Court of Appeals of the District of Columbia granting the same, namely:

1. The contract itself was, by its own terms, either self-terminable by reason of failure of compliance on November 7, 1903, with the provision then to be complied with, or it was a contract optional with the vendor and terminable by him or his legal successor in title after the passing of that day without compliance with such provision.

a. That it was self-terminable, and therefore terminated on the day mentioned, is shown by its terms (*ante*, 29-33), and by the conduct of the parties, particularly that of the appellee (assuming to be the vendor's successor in title), who treated the contract as terminated and endeavored to make a new contract with the appellant in the premises (*ante*, 33-36), having notice at the time that the appellant was claiming to be acting in the transaction for the oil company, and not for himself individually.

b. If optional, it was terminated on November 16, 1903, by the act of the appellee (assuming to be the vendor's legal successor in title), in notifying the appellant that, unless complied with by that day, it would then be terminated; and it was not complied with on that day or any day thereafter, and was, therefore, extinct before the bringing of this suit (*ante*, 36-40).

2. The contract and the conduct of the parties thereunder—"the sale" (as the Court of Appeals characterizes it)—in fact did not operate a conversion, because the failure of (1) the making cash payment; (2) delivery, or even

execution, of the notes for the deferred payments, and (3) execution of the mortgage to secure the said notes, left undone the three things provided by the contract to be done by the vendee, each of which alone, and *a fortiori* all of them together, left the situation without that which is indispensable to conversion, namely, the doing by the parties of what was contemplated to be done so as to cause them in fact and in law to change places in relationship to title to the real estate, on the one hand, and the money to be paid for it, on the other: in other words: the consummation of the contract as to everything, except the actual exchange of what each party was to give to the other—on the part of the vendor, title to the land, and, on the part of the vendee, the consideration therefor.

3. Whether the contract and the conduct of the parties under it—"the sale"—operated a conversion, as held by the Court of Appeals, is immaterial, as,

*a.* The appellee (assuming to be the vendor's legal successor in title), neither by any conduct before bringing his suit nor that in bringing the same, treated the contract as operating a conversion;

*b.* The very suit itself, which is for specific performance, is a proclamation by the appellee of non-compliance by the appellant with the terms of the contract, of which the three essentials on his part were (1) making the cash payment; (2) the passing of his notes for the deferred payment; and (3) the execution by him of a mortgage to secure the said notes; and, accordingly, a proclamation that there was no conversion in the premises.

*c.* If there were a conversion, a suit against the appellant for specific performance would have to be brought by the heirs, the vendor's legal successors in title, unless the vendor, by will, vested his executor with appropriate title; which is not here the case, inasmuch as the only vesting of the executor with title to the vendor's real estate is derivative from the

authority to sell, given him by the will in that behalf, and which empowers him only to make a sale of any portion of the vendor's real estate, (1) after the vendor's death; (2) at public, and not at private, sale; and (3) after one month's notice by publication.

4. The action of the appellee in procuring the orders of the orphans' court of November 17 and December 15, 1903, and basing this suit thereon (*ante*, 24-28), negatives both (1) the idea that he could claim the purchase money of the appellant as though there had been a conversion in the premises; and (2) the idea that the contract was the subject of a suit for specific performance; because,

a. If in fact there had been a conversion claimed by the appellee, he should and would have sued the appellant at law for the purchase money; and,

b. His procuring the orders in question was upon the distinct assumption, jurisdictional in the court making those orders, that the contract had in fact been performed by the appellant, and that there remained only to complete its performance—in the language of the vendor in his act of ratification, its "consummation"—on the part of the vendor, the conveyance of title.

5. The suit being based upon the said orders of the orphans' court, the appellee's right to maintain the same is conclusively negated by the want of jurisdiction in that court to make those orders, by reason of the non-existence of the sole condition in respect of which that court had jurisdiction, namely, the actual payment by the appellant of the purchase money, and the remaining to be done for consummation of the transaction only the passing of title to the land: wherefore, both the said orders and everything done thereunder by the appellee are in law both void and futile.

6. The suit being *in personam*, and any decree therein not binding upon the courts of Maryland with respect to the

question of title to the land, and that title depending upon the law of Maryland, as contained in its legislation and declared by its courts, there is manifestly, on the face of the matter, such reasonable chance that third persons, namely, the heirs of the vendor or their assignees, might raise questions, grave in character, against the appellant after completion of the contract, even through the medium of specific performance, and might bring annoying, if not successful, suits against him and probably take from him or his representatives, land in which his money would have been invested; and it being manifest that the title which the appellant would derive through a decree in the premises would not enable him to hold the land in peace, or enable him, if he should wish to sell it, to be reasonably sure that no flaw or doubt would come up to disturb its marketable value: the title tendered the appellant by the appellee, and assumed to be forced upon the appellant by the court below, is not of the character that a court of equity should or could compel the appellant to take (*ante* 54, 57).

7. The character of the appellee as executor of the vendor being challenged, and proof of his due appointment and qualification as such being exacted in the outset, and it abundantly appearing that such challenge has not been met, nor such proof produced (*ante*, 17-24), the appellee has not established his right to bring this suit.

Respectfully submitted.

HENRY E. DAVIS,  
JAMES E. PADGETT,  
*For the Appellant.*

IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1909.

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No. 145.

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WILLIAM W. STEWART, APPELLANT,  
*vs.*  
LEWIS A. GRIFFITH, EXECUTOR, APPELLEE.

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**BRIEF ON BEHALF OF APPELLEE.**

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This is an appeal from a decree of the Court of Appeals of the District of Columbia (Trans. Rec. 399) reversing a decree of the lower court dismissing a bill filed by the appellee Griffith as executor of the estate of one Alfred Ball, deceased, seeking to compel appellant Stewart to perform specifically a contract he had made purchasing certain land in Maryland belonging to Alfred Ball. The trial court originally had signed a decree of specific performance in favor of appellee Griffith (Rec. 329), but opened the case on affidavits of handwriting experts (Rec. 344) that the decedent Ball had not signed certain papers in order testimony on this point might be

taken (Rec. 367). The trial court on rehearing found the new testimony and the alleged impeachment of Ball's handwriting without merit but permitted argument anew on certain law points and reversed its former decree and dismissed the bill on the ground "alone" as set forth in its decree (Rec. 369) by order of the trial justice that the heirs of Ball were indispensable parties to the proceedings. The Court of Appeals held on appeal the heirs were not proper parties and directed reinstatement of the original decree (Rec. 399) from which action appellant noted the present appeal.

### **Statement of the Case.**

The case at bar is a suit by appellee Griffith as executor of Alfred W. Ball to compel the appellant Stewart to perform specifically an agreement whereby he purchased the farm of Ball in Prince George County, Maryland, in June, 1903, at \$40 an acre, paying \$500 down and agreeing to pay the balance of one-half of the purchase price, the farm meanwhile to be surveyed and acreage ascertained, on or before November 7, 1903, and at the same time to give a purchase money mortgage for the remainder of the total computed purchase price (Trans. Rec., p. 11). At the time sale was made drilling for oil was progressing on the farm adjoining Ball's. The well proved to be dry, and appellant refusing to take the land, suit was brought to compel him to receive the title and pay the purchase price.

The bill in equity alleged that in June, 1903, Alfred W. Ball owned a farm in fee-simple in Prince George County, Maryland (Rec., p. 2), and that it then having a salable value based on the supposed existence of oil on the tract, Ball was approached by the appellant (defend-

ant below) who wanted to buy the farm. Ball, being of little education, placed its sale in the hands of his family physician, the appellee here (Rec., p. 45), giving him a power of attorney to sell for not less than \$35 an acre (Rec., p. 9). Appellee sold for \$40 an acre to appellant who, on June 5, 1903, signed an agreement of purchase, paying \$500 down as part purchase price and binding himself to pay the remainder of one-half of the purchase price on or before November 7, 1903, and to secure the balance of the purchase price by interest bearing purchase money mortgage notes. The agreement provided (Rec., pp. 11 and 12) that the land should be surveyed and paid for at \$40 per acre, according to the number of acres found by the survey. The farm had been estimated to contain 240 acres more or less, but appellee stated to appellant that Ball claimed that while it was assessed as containing only 240 acres, it contained really nearer 275 acres (Rec., p. 49). Both parties agreed to abide by the survey. The final agreement provided that the title should be searched by J. K. Roberts, an attorney of Prince George County, Maryland, and that proper deeds of conveyance and an abstract showing a good title should be made by Roberts. Each party to the sale was to pay one-half of the price of title searching and surveying and likewise one-half of the taxes for the year 1903. The agreement provided that in case the first half of purchase price was not paid by November 7th, that then the \$500 paid as part purchase price "is to be forfeited, and the contract of sale and conveyance to be null and void and of no effect, otherwise remain and be in full force." Ball was to have the possessory right to the premises until November 7th. The sale was made by Ball under a power of attorney given by him to appellant, and subsequently the sale was



ratified by Ball. The bill averred that Ball always stood ready to keep the agreement; that Ball died the night of November 5-6; that by his will appellee was vested with full and complete power over the entire estate, real, personal and mixed, of Ball; that the Probate Court of Prince George County, Maryland, had authorized appellee as Ball's executor to carry out the contract made and ratified by Ball in his lifetime; that demand had been made on appellant to perform his contract specifically, and that he had refused to do so.

The appellant first demurred to the bill, and when his demurrer was overruled (Rec., p. 37), answered, affirming (Rec., p. 39), that while the land was purchased in his name, it was known to appellee he was only the nominal purchaser, the real purchaser being a company known as the Maryland Oil & Development Company; that the agreement was not a sale or agreement of sale, but an option contract; that the appellee as executor had no right to maintain the suit; that the contract became null and void on the death of Ball; that appellee and appellant on November 10th had ended the contract and that appellant refused to revive it; that the title was defective; that no survey was made in Ball's lifetime; that the land contained more than the agreed acreage; that the title was not good; that the price of \$40 an acre was exorbitant, and that appellee had a good remedy at law.

The evidence taken in the case shows that appellant Stewart is a lawyer, and had been a dentist and an industrial boomer or promoter (pp. 173, 4 and 9). He was interested by one A. W. Thomas and others in buying lands for oil exploitation in Prince George County, and became president of a company that obtained title to a tract of more than a thousand acres of land adjoin-

ing the land in controversy, and leases on many other tracts in the county at a distance from the oil tract proper. Stewart also personally purchased several farms separated from the oil tract proper held by the company only by the intervening A. W. Ball farm in controversy (p. 172). After these company lands and also the personal lands of appellant, bought on his (Stewart's) personal account and not for the company, had been purchased, drilling for oil was begun on the oil tract proper at not a great distance from the land in controversy. The result was quite an advance in land values. Appellant and those associated with him tried to lease the land in controversy from Ball, who, with his brother, James T. Ball, both unmarried, then lived on the land, as his father had before him, but Ball refused. The Ball farm was considered as highly desirable territory if oil were struck. The Balls would not deal with a cattle trader named Leapley, sent by appellant to deal with them, and told him to see appellee Griffith, who is a country doctor, and had been one of the judges of the County Probate Court, and for five or six years had attended the Balls, who were illiterate, lived a retired life, and knew nothing of business.

Leapley introduced appellee to appellant. Leapley, whose reputation for truth and veracity, according to the testimony of a Methodist minister, a lawyer, and two farmers of his community, is bad, testified he introduced appellee as president of the oil company which was boring for oil, and appellant also so testified. Appellee on the contrary testified appellant was introduced simply as Dr. Stewart, of Washington, that he did not know who were the officers of the oil company, and never had been then or up to the time of the pending trial, to the scene of the oil well drilling. Leapley before this had told appellee that

Stewart wanted to buy the property, and several times while appellee was attending the Ball brothers in the spring of 1903 they had asked appellee to sell the place for them, and Alfred Ball had told him of Leapley's visit.

Early in June, 1903, and after Griffith's talk with Leapley, Stewart and Leapley hunted up Griffith at his home in Marlboro and opened negotiations (p. 88) for the purchase of the Ball farm in controversy. The fact that Griffith had no power of attorney as yet authorizing him to sell the property was mentioned. The testimony differs as to who first brought up this fact, but the difference is not material, as the recognized importance of its procurement is conceded. Stewart inquired the price. Leapley says it was \$10,000 that was named at Griffith's house (p. 89). Stewart says \$10,000 was mentioned by Griffith and 240 acres as the land area at the house, and that it was changed to \$40 an acre, without any statement of a larger acreage, at the house of Ball, while Griffith says he told Stewart Ball claimed there were nearer 275 acres than 240, that it was agreed by both parties the farm should go as a whole according to the acreage as found by a survey agreed to be made, and that only an acre price ever was talked of, though the statement may have been made the cost would be in the neighborhood of \$10,000. Stewart, after the price was named, inquired as to the terms. Griffith demanded \$500 down and the balance necessary to make up one-half of the purchase money in three months; whereas Stewart's desires were \$250 down and six months' time for the balance of one-half. The talk ended in an agreement that Griffith should get a power of attorney from the Balls (p. 88) as a necessary preliminary and should talk with the Balls as to

terms. Griffith parted from Leapley and Stewart with the understanding they should meet at Meadows Post-Office, also called Centerville, a half mile from Balls and several miles from Marlboro, at 4 o'clock that afternoon, Griffith meanwhile to do what was agreed. He had Joseph K. Roberts, a Marlboro lawyer, who had examined titles for Stewart and his oil associates prior to this time, draft the power or powers of attorney, and then, in company with J. Alfred Ridgeley, justice of the peace of Marlboro, drove to Ball's house. There Ball signed two powers of attorney (pp. 53, 71 and 295), differing only in that one mentioned the commission that Griffith should get for making the sale, and the other making no mention thereof. Justice of the Peace Ridgeley took Ball's acknowledgment to both powers of attorney. The power of attorney with the commission appears in the Record on pages 9 and 10, and the other power of attorney, appellee alleges, he later gave to A. W. Thomas, agent and attorney for Stewart, which statement Thomas denies. Later Ridgeley took a third power of attorney known as the Jim Ball power of attorney from Alfred Ball, but it relates to other land than that in controversy, being land left by Jim to Alfred.

Before the business at Ball's house was hardly completed, Appellant Stewart and Leapley drove up to Ball's house, not waiting at Centerville, as they had agreed. Griffith informed Stewart that Ball had given him a power of attorney, but it was not called for or shown at this time (p. 52). They talked a short time apart from Leapley and Ridgeley. Stewart says it was at this time the price was definitely fixed at \$40 an acre, instead of \$10,000, while Griffith states the price was always an acre price of \$40 an acre but it was stated it would amount to

about \$10,000. The price, as shown by the signed contract, was \$40 an acre, and the acreage 240 acres more or less, but the price, as set forth in the signed contract (p. 309), to be based on the acreage as the survey might show. Griffith stated to Stewart in this interview that the Balls objected to a cash-down payment of less than \$500, and said that much would have to be paid down and the balance necessary to make up one-half of the total purchase price in five months. Stewart replied that was all right and the property was his, and then it was agreed Stewart should have until the following Monday to pay the \$500 and sign the agreement. Prior to this agreement there had been talk about the quantity of land. Griffith says Stewart remarked the tract contained about 240 acres, but he (Griffith) replied (p. 49) he thought the assessment books would show about 240 acres, but that Ball always said there were nearer 275 acres. Stewart had responded that the matter would be settled then by a survey (see deed, p. 309). A burial place acre was to be reserved, and some small parcels had been sold off. Griffith testified that Stewart wanted the entire tract, even to the burial ground of one acre of the Ball family, and that the final agreement was to have a survey in order to fix the price according to the survey, which was to be made in the interval allowed for payment of the balance of one-half of the purchase price, the title also to be examined meanwhile. Stewart testified the survey was agreed on because the Balls had sold off a few acres and because it was necessary to mark the boundaries of the farm.

Although Stewart had until Monday to make the down payment of \$500, he did not wait his agreed time, but the down payment was made the next day, one A. W. Thomas making the payment, with Dr. Stewart's personal check

(see check on page 47). The testimony as to whether appellant believed he was dealing with Stewart personally or with the oil company, known as the Maryland Oil & Development Company, is substantially as follows:

Appellee testified (p. 53) that prior to the time he made the sale nothing was said to him as to Stewart representing anybody but himself, that Leapley merely told him Stewart wanted to buy the property and that he never heard of an oil company in connection with the purchase until about October 15, 1903, when he called on Stewart about having the property surveyed, and Stewart asked him not to agitate the matter, saying for the first time he had promised to let the oil people have the property at just what he had paid for it if they wanted it when the payment was to be made in November, but that he had bought it for himself, and if Griffith would hold off, he (Stewart) would pay him a thousand dollars or any reasonable amount and then have it surveyed, because if the oil people did not meet their obligation in November his word would be kept, and if oil did not materialize he would sell the farm off in lots to settlers. He reluctantly assented to the proposition, and, after consulting Ball, agreed to make no further move until November 7. He had no knowledge the consideration money or the money received to pay one half the taxes was not Stewart's; he had received Stewart's personal check for these payments and not checks from any oil company.

Leapley testified (p. 88) that he told Griffith he was acting for the Maryland Oil & Development Company and that he would bring the company's president down to deal with him. He had introduced Stewart as president of and as representing the oil company. Stewart testified (p. 151) Leapley introduced him as Dr. Stewart, presi-

dent of the Maryland Oil & Development Company. Griffith explicitly denied this testimony was true (p. 235). The verbal agreement at the Ball farm was followed by the appearance of A. W. Thomas at Marlboro the next morning (the evidence leaves it possible, however, that a day may have elapsed, though Dr. Stewart's testimony is that it was the next day). Thomas testified (p. 104) that he had been secretary of the Maryland Oil & Development Company from its beginning, and since 1901 his office and the company's had been in the same building with Dr. Stewart. Stewart was president of the company in June, being succeeded in July by one Lucas. Over objection of appellee as incompetent, records of the Maryland Oil & Development Company, in the form of loose leaves, were put in evidence, showing Dr. Stewart had advanced the oil company \$100 with which to make the first payment on the land in controversy, the company having only \$400 in bank.

A. W. Thomas, witness for appellee Thomas, who had been a lawyer in several States, testified that Stewart had reported to an executive committee of the oil company the morning after the interview with Griffith at the Ball farm. It was decided to send witness, who was the company's attorney, to Marlboro to close the deal. Witness was given a certified check for \$500, dated June 5, 1903, signed by W. W. Stewart personally (p. 105) and payable to the order of L. A. Griffith as agent for A. W. Ball and brother. At the same time the company had made Stewart a check for \$400, and on July 16 repaid Stewart the other \$100 along with certain other advances. Appellee objected to this testimony as to private dealings between appellant and the oil company to which he was not a party directly or indirectly. Thomas found Griffith



in his office at Marlboro (p. 111) and "told him that I came down to carry out the agreement made by Stewart with him in reference to the Ball land and showed him the check for \$500." Witness drafted the contract, and while he was finishing it Griffith went out to find Mr. Latimer, who was to survey the farm, and Mr. Roberts, who was to examine the title. Witness had handed Griffith a business card giving his name as A. W. Thomas, attorney and counselor-at-law, Washington, D. C., and called Griffith's attention to the fact he had offices in the Stewart building, being secretary of the Maryland (p. 112) Oil & Development Company. As witness was leaving for home he said, "Dr. Griffith, if people talk about this I wish you would make them believe that this is a lease, if you can, because if it is known that the company buys any lands they won't lease any more and so we will have to buy all instead of leases." Witness said the company and, of course, meant the oil company. He said this just as about to enter the carriage, and Griffith replied "all right." The contracts had been offered in evidence. They consisted of a duplicate written contract or deed (p. 308) dated June 5, 1903, signed and purporting to be made by "L. A. Griffith, agent for A. W. Ball" and by "A. W. Thomas, agent for W. W. Stewart," and a type-written contract or deed (superseding the written contract or deed) dated June 5, 1903, purporting to be between (p. 10) "L. A. Griffith, duly authorized agent and attorney under a certain power of attorney from Alfred W. Ball, both of Prince George County, Maryland, parties of the first part, and Wm. W. Stewart, of Washington City, D. C., of the second part," signed by "L. A. Griffith, Agent. Wm. W. Stewart"—this latter document (p. 114) by agreement having been brought to Washington

by lawyer Roberts June 6th for Stewart's personal signature.

Vincent Richardson testified (p. 83) he had been employed on the Ball place first by Alfred Ball and later by Griffith. Witness had stopped Stewart, who was hunting on the place, and Stewart replied he had a right to hunt on his own place. Leapley, Richardson said, had tried to buy the place from Ball for \$40 an acre. Stewart later denied this conversation was as stated by the witness.

A. W. Thomas testified (p. 14) that the contract had been entered into in Stewart's name instead of the oil company's as a result of a talk between witness, Stewart and the company's executive committee as, if it were known the oil company had bought the Ball land, the people would not lease but would want to sell. On cross-examination witness testified that Griffith knew him personally and knew he was secretary of the oil company (Griffith denies this, and the statement was based on the fact some months before Griffith had casually met him on the road, and Thomas claims it was then said he was connected with the company. See pages 110, 145 and 234).

When he saw Griffith (p. 125) witness showed him the check and told him "I came down there to carry out the arrangement made by Dr. Stewart with him in reference to the Ball land." Asked if he had a letter or anything of the sort from Dr. Stewart to Dr. Griffith accrediting him, witness replied he thought he had a note of some kind, but he could not remember anything as to its contents except it was very brief (see p. 125). After several questions as to why the company's check was not used, witness replied because the object was "that the

check should not be the company's check," and they did not want the fact the company was purchasing to become known by the check passing through the bank. He supposed Griffith knew Stewart was not the real purchaser and that the signed paper "was drawn with reference to the understanding had by Dr. Stewart and Dr. Griffith." He had no personal knowledge of such an understanding. Asked why he should have apprised Griffith the oil company was buying, Thomas replied he did not recollect testifying that he said directly that he apprised Griffith the oil company was buying; he supposed Stewart had all that arranged.

He had not said he represented anybody as attorney, but simply that he came down there to carry out the understanding with Dr. Stewart. The check and the note all had been hurriedly done (p. 129).

Appellant Stewart testified that he was president of the oil company until July, 1903. Leapley had introduced him to Griffith as president of the company (p. 151) and after the talk with Griffith at Ball's, he called his executive committee together the next morning. The committee suggested his name should be used instead of the company's, so the public would not know of it. He advanced the company \$100; at that time they supposed the Ball brothers owned the tract, and witness' check was used by Thomas, to whom witness gave letter. Appellant (defendant below) called on appellee to produce the letter (p. 154), but appellee refusing to say if they had it on the ground appellant wanted it before committing himself. Witness said he could not remember its phraseology, but he may have said Thomas was his attorney. His recollection was he did. He had previously indicated to Griffith the oil company was buying.

At the next session the appellee offered in evidence (p. 159) the following letter:

WM. W. STEWART, Attorney-at-Law, Etc.

Dr. L. A. Griffith, Upper Marlboro, Md.

Dear Sir: I am obliged to go out of the city to-day, and I herewith send my attorney, Mr. A. W. Thomas, with my certified check for \$500 to complete purchase as agreed upon with you yesterday for the Ball tract, balance of payments to be made according to understanding had with you.

W. W. STEWART.

On cross-examination witness testified (p. 176) that it might be he saw Griffith at Ball's farm at 4 o'clock Thursday, June 4, and that Thomas was at Marlboro before noon the next day. Thomas had driven the 18 miles. He denied he had made the contract and that then the oil company had taken over the deal. He had first asked Griffith to lease to the Maryland Oil & Development Company, and Griffith had replied he did not think the Balls would lease. He had stated when Griffith named terms that it was the oil company's money and not his, and that he would have to bring the matter before the company before the thing would be a go. The whole matter was done in a hurry, and the committee's meeting might have occurred as early as 8 o'clock in the morning, because it was summer and "we were up and doing and everything was alive." He was not at that time as anxious to make the deal as Mr. Thomas and the executive committee. He knew Dr. Griffith was a country doctor, whose practice took him into the homes of all the people. Asked why he disclosed the real principal (p. 179) to

Griffith, witness said: "That is my method of doing business. I always tell people what I mean and what I am going to do, and I do what I say I will do." The note of introduction was written by somebody else while he was up in his office, it was drawn hurriedly, and there had been a full understanding between himself and Griffith as to the proper parties. The letter of introduction was of no significance (p. 191) and Thomas was merely to carry out his (appellant's) arrangements with Griffith. No authority had been exhibited to Griffith (p. 198) that witness had the right to act for the oil company other than witness' statement, and none was asked. All leases and purchases of the company other than this one were taken in the name of the company and all witness' personal dealings in buying land on his personal account in the neighborhood were in his own name.

Frederick Briggs testified that he was one of the executive committee of the Maryland Oil & Development Company (p. 206), and that it had authorized Dr. Stewart to buy the land in controversy, that Dr. Stewart had advanced the company \$100, and Stewart's check and a letter of introduction had been given Thomas. Witness as treasurer had reimbursed Stewart his advances and expenses. On cross-examination he testified that he remembered the dates of the executive committee meetings as June 4 and 5, because on July 14 he had become treasurer, and two days later had paid a bill of Stewart's and this had enabled him to remember a date a month previously. Witness said that prior to testifying he had looked over the testimony previously given, whereupon a motion was made to strike out his testimony.

Over objection George K. Flynn and Elisha Ferguson, for appellant, testified (p. 211) to having talked with Alfred Ball after the sale, and to Ball saying he had sold

to an oil company. Several witnesses testified the reputation of these witnesses for truth and veracity was bad. James Herrison testified Ball had said (p. 217) he had sold his property and had received \$500 on it, but did not say who had bought it. James Branson testified that Ball had told him before the deal that the oil company was negotiating for his land, that the only way he would sell would be to sell an option, and that later he had said the oil company had paid \$500, and if they did not pay the balance the contract became void. On cross-examination he said the conversation occurred in the month of May, 1904, and insisted it was last year he had talked with Ball. He did not know Ball had died before this time he named. It might be he had talked with Flynn and Ferguson in a saloon since their testimony, but not as to their evidence.

Rene Baughman (p. 219) testified that Dr. Stewart had loaned the Maryland Oil & Development Company \$100, and Mr. Thomas was authorized to close out the deal for the company that Dr. Stewart had made with Griffith. On cross-examination witness said there was discussed at the executive committee meeting the advisability of making the purchase and also the advisability of concealing the fact the company was to be the real purchaser. Mr. Thomas prepared and Dr. Stewart signed the letter of introduction. The letter was discussed (p. 223) after its preparation and the advisability of stating in it that Mr. Thomas was going as the agent of the Maryland Oil & Development Company. He could not remember whether it was decided advisable not to put in the letter anything concerning the Maryland Oil & Development Company. He knew the whole transaction was to conceal the company's identity from the general

public, not from the principal, but why the identity could be mentioned verbally and not in that letter he did not know.

In rebuttal Scott Armstrong (p. 229) testified that as school trustee in the autumn of 1903 he had sought to buy a lot out of the Ball tract for a school house, and had asked Dr. Stewart if he had bought the place individually or for the company, and Stewart had told him he bought it individually and not for the company.

Everett Pumphrey (p. 249) testified that he lived near Ball and had heard Alfred Ball say before his death he had \$500 of the oil company's money, and he did not care whether they took the property or not. This was about a week before Ball's death. Asked on cross-examination if when outside the Stewart building at a previous session of testimony he had not said to Mr. Merillat he knew nothing about the deal and that he never had heard Alfred Ball talk about it at all, witness replied he had said he knew nothing about the case, but denied he had been asked if he had heard Alfred Ball say anything about it. Witness kept a bar on the pike and had been arrested for assault, for selling liquor on Sunday, for selling a tuberculous cow and giving a bad check, but it was shown his check was good. He had come to testify at Leapley's request. He did not know whether he had witnessed Ball's will and if there were an affidavit of his on file stating he had it was wrong.

Mr. Merillat and appellee testified Pumphrey had told them when asked the direct question that he had not heard Ball talk about the matter.

For appellee (complainant below) Mrs. Anna I. Meloy (p. 253) testified she was distantly connected with the Balls, but not interested in the estate, and the day James Ball was buried she had asked Alfred if he had sold his



place; he said yes, and she asked if to the oil company. He replied that he had sold to Dr. Stewart. George S. Harrison, farmer and election registration officer, testified when coming up to register Ball had said Griffith had sold his place for him to Dr. Stewart, and on the rehearing a number of other witness testified to the same effect.

After the manuscript papers prepared by A. W. Thomas had been signed by Thomas and Griffith they were typewritten by Attorney J. K. Roberts, of Marlboro, with some modifications, and the typewritten copy signed by Griffith. Roberts brought it to Washington the next day, June 6, where after being compared by Roberts and Thomas it was signed by Stewart personally. Mr. Thomas testified (p. 115) that Roberts, in his testimony, evidently had forgotten this meeting and testified that Roberts had said he understood that the oil company was the real purchaser. Witness had replied yes, and Roberts said he supposed they would pay one-half of his fee. Witness had replied certainly, but they didn't want anything said about that, and Roberts had replied all right. Dr. Stewart was in a hurry when he came in to sign. Stewart also said to Roberts it was the oil company's money. There was introduced in evidence (p. 116) a bill dated June 13, 1903, by Roberts to the Maryland Oil & Development Company for one-half of the fee for examining the title. The bill was enclosed with an abstract of title. Dr. Stewart testified (p. 155) that he had said to Roberts he was only acting for the Maryland Oil & Development Company, and Roberts replied certainly he understood that. In rebuttal Roberts testified (p. 241) he had no recollection of Thomas saying to him an oil company was the real purchaser, and for that reason had testified in his direct examination that he never had heard

of the oil company. Prior to coming to Washington June 6 with the typewritten agreement he had no knowledge this was the oil company's deal. He kept regular books of account and there was put in evidence (p. 242) from Roberts' book an account made contemporaneously, charging Griffith and Ball with half and Dr. W. W. Stewart with the other half of the fee of \$50 agreed on.

Subsequent to the agreement taxes fell due and there was introduced in evidence (p. 109) a check dated Sept. 10, 1903, by W. W. Stewart, personally, to Dr. L. A. Griffith for \$8.26 in payment of one-half of the taxes for the year, and the defense introduced a check of the same date by the Maryland Oil & Development Company to Stewart for the same amount to recoup appellant for his payment to appellee.

Some correspondence followed the agreement and there was introduced in evidence (p. 156 et seq.) postal cards and letters from Griffith to Stewart dated in September and November 5 and 7, all concerning the Ball farm sale. Each was addressed to W. W. Stewart personally and none made any mention of the oil company.

Dr. Griffith testified (p. 54) that the first he ever heard of an oil company was about the 15th of October, when one day he had called on Stewart regarding having the property surveyed, and Stewart "told me then for the first time that he had promised the oil people to let them have this property at just what he had paid for it if they wanted it when the payment was to be made for it in November, but that he did not want them to have it, he had bought it for himself and wanted to keep it himself, and if I would just let the matter drop or hold off he would pay me a thousand dollars or any reasonable amount I would specify, and then have the property surveyed, be-

cause his word would be kept with the oil people, and if they did not meet their obligation in November that he would be under no further obligations; that if the oil did not materialize there, that he expected to divide that property and sell it off into lots for settlers to go into that neighborhood. I reluctantly consented to the proposition and agreed after consultation with Mr. Ball to wait until the 7th of November before we made any further move. I don't think that I had any more conversations in which the oil company was mentioned until after the death of Mr. Ball." After the death of Ball (p. 56) Stewart had said to him "You know that I bought this for the oil company." He had replied: "I know nothing of the kind." Stewart then had told him to go ahead and sell and forfeit the company's \$500, and he had replied he had nothing to do with an oil company and would look to Stewart exclusively.

Dr. Stewart testified (p. 157) he was out of the city from October 10 to November 1. Griffith had made some short pop calls on him before October and had wanted to know what the company would do, and he had replied he did not know that it depended wholly on the company's prospects; Dr. Griffith in rebuttal (p. 235-7) squarely denying the truth of this testimony of Dr. Stewart. On November 9, after Ball's death, he (Stewart) had asked Griffith if that did not complicate matters. Griffith replied no; witness had said he thought it did, but as it concerned the oil company alone he would let the company decide. On November 10 he had received a letter which was put in evidence (p. 162) from Griffith saying he had consulted lawyers and was satisfied he (Griffith) was fully authorized to complete the sale, and asking to be advised by the 16th what witness intended

to do, and stating if satisfactory arrangements were not made before then he could consider the matter ended. Witness took no further steps and considered the matter finally ended, especially after the company did not put up any money on the 16th, which he knew they would not. He felt much elated the matter was settled.

There was next put in evidence a letter from Wm. W. Stewart to Dr. L. A. Griffith, dated Nov. 23, 1903 (p. 164), stating the agreement was entered into for the *Maryland Oil & Development Company*, and that he (Stewart) assumed no personal liability regarding it. Also a reply dated Nov. 24, from L. A. Griffith to W. W. Stewart stating he knew nothing of any company, that his business was with Stewart and "I shall deal with you." Also a letter (p. 117) from "A. W. Thomas, Atty. for Maryland Oil & Development Company," dated Nov. 23, 1903, to J. K. Roberts, objecting to the title now Ball was dead, and stating he had advised the *Maryland Oil & Development Company*, the real party to the agreement, that it should stand pending completion of perfect title.

Dr. Stewart testified (p. 165) he had written his letter after getting word of an Orphans' Court order somewhere between November 17 and 22 looking to completion of the matter. He had complained to the executive committee he was placed in an embarrassing position, as he could not help Griffith writing letters or prevent Thomas demanding title. He was between the devil and the deep sea.

Dr. Griffith testified (p. 237) that he had written Stewart the letter of November 10, 1903, because, while he had no authority at the time to act, he wanted something definite to bring before the Orphans' Court when the will was admitted to probate and he would qualify as executor.

He did not know Stewart was worth any property and he had another offer, but he saw a lawyer, J. K. Roberts, before Court assembled and was told nobody had any right to violate that contract, and that he would only bring on a lawsuit if he attempted to dispose of the property except to Dr. Stewart under the contract. The matter was then put into the hands of the Orphans' Court. Mr. Roberts testified (p. 245) that he had advised Dr. Griffith, now Ball was dead, he could act only under the orders of the Orphans' Court and had no power himself in the premises.

December 8th an interview occurred between Dr. Griffith and Attorney Wm. E. Ambrose and Wm. W. Stewart and A. W. Thomas. The record shows the latter two claimed Stewart had then said that it was the oil company's matter and thereafter had nothing to do with the negotiations, while the two former testified Stewart made no such statement and did take part in the negotiations and stated he (Stewart) had no purpose except to take the property himself if the title was made perfect (pp. 57, 59, 119, 120, 166, 200, 247).

The interview between Dr. Griffith and A. W. Thomas, at which the latter presented Dr. Stewart's letter of introduction and personal check, resulted in A. W. Thomas drafting two manuscript copies of an agreement of sale. The evidence regarding the powers of attorney given by Ball to Griffith was substantially as follows: Dr. Griffith testified (p. 49) that just before Stewart drove up to Ball's house as he (Griffith) was coming out, Alfred Ball, whom he had ascertained to be the sole owner, and not the Ball brothers, as he had supposed previously, had signed two powers of attorney empowering Griffith to sell the land (p. 52). He had told Ball of his interview that

day with Stewart. He had informed Stewart when he came out of Ball's house that he had a power of attorney, but did not show him it. The power of attorney had been procured as the result of his talk with Stewart that forenoon. The powers of attorney were identical, except that one of them contained the commission he (Griffith) was to receive. This power of attorney (p. 9), known as the long power of attorney, appointed Griffith Alfred Ball's agent and attorney to negotiate for the sale and transfer of the land in controversy at not less than \$35 per acre, Griffith's commission to be whatever was realized above this sum. Ball agreed to sign the contract in writing ratifying and approving the sale, provided he was paid \$400 and that the sale should be consummated within 150 days by payment by the purchaser of one-half of the whole purchase money. At that time Alfred Ball owned no property except the farm in controversy; although later his brother James had died leaving him a farm James had in the county. The powers of attorney conferred no authority to give an option.

After Thomas had given Griffith (p. 52) Stewart's personal check, Griffith testified he gave Thomas the power of attorney that Ball had signed which did not include witness' commission, Thomas almost at the beginning asking for it. After getting the power of attorney, Thomas had remarked it was from A. W. Ball, and witness had told him no one else had any interest in it. Thomas replied that was satisfactory entirely and then had proceeded to draw the manuscript contracts.

The manuscript contracts drawn by Thomas were in duplicate. Appellee (plaintiff below) offered one in evidence (p. 308). By it, "L. A. Griffith, Agent for A. W. Ball," and "A. W. Thomas, Agent for W. W. Stewart,"

the witness being J. K. Roberts, agreed that Stewart had paid to Griffith, agent, \$500 "part purchase price of the total sum to be paid for a certain tract of land owned by said Alfred W. Ball near Centerville, Prince George County, Maryland, containing 240 acres, more or less, at the rate of \$40 per acre." Griffith as agent "grants, bargains and sells, and agrees to convey by proper deed in fee-simple free of all encumbrances of every nature, duly executed by said Ball to said Stewart said 240 acres of land," the balance of one-half of the purchase price to be paid on November 7, 1903, and the remainder secured by purchase money mortgage, notes to be given by Stewart and his wife. The land was described as "the same tract or parcels of land whereon the said Alfred W. Ball now resides," and a conditional reservation of one acre for the Ball burial ground was made. "The said land is to be surveyed and plat made thereof and the total purchase price is to be at the rate of \$40 per acre as determined by said survey"—each party to pay half costs of survey. Proper deeds "and abstract of title of said land, and title search therefor, to be made showing clear unincumbered fee-simple title in said lands in said grantor Ball"—and the parties contracting each to bear half of title costs." In case the remainder of the first half of said purchase price is not paid on November 7, 1903, then the \$500 paid "is to be forfeited, and the contract of sale and conveyance to be null and void, otherwise to remain in full effect according to the terms and tenor hereof."

This manuscript agreement was put into final shape by Attorney J. K. Roberts, who typewrote the same and then, after it had been signed by Griffith, took it on June 6 to Washington, where it was compared by Roberts and Thomas and then signed by Stewart in person. The



typewritten agreement (p. 11) differs in phraseology in several respects from the manuscript agreement. The chief changes are that near the beginning it added to the description of the land sold as that owned by Alfred Ball near Meadows Post Office the words "known as part of a tract of land called Crotch Hall," and later that it described the land as the same land willed to Alfred Ball by his father, Henry Jackson Ball, less about six acres sold off; that the title search sentence was changed to read: "Proper deed or deeds of conveyance and abstracts of title of the said land based upon title searches thereof is to be made by J. K. Roberts, attorney of Upper Marlboro, Md., showing clear and unincumbered fee-simple title in the said land above mentioned and described, in the said Alfred W. Ball"—costs not to exceed \$50, to be borne equally by the parties, and the sentence as to non-payment was made to read: "In case the remainder of the first half of the purchase price be not paid on the 7th day of November, then the said \$500 so paid to the said Griffith is to be forfeited and the contract of sale and conveyance to be null and void and of no effect; otherwise remain and be in full force."

Dr. Griffith testified he had told Leapley (p. 45) first and later Stewart he had not yet obtained a power of attorney and by agreement with Stewart he arranged to get one and see Ball. He had Roberts draw the power of attorney and then drove with the justice of the peace to Ball's and procured Ball's signature, meeting Stewart in Ball's yard as witness came out of Ball's house, telling Stewart he had the power of attorney and there agreeing on terms of sale. At his house before going to Ball's Dr. Stewart had said to him he believed the tract contained about 240 acres, and witness had replied he thought

the assessment books showed about that, but Ball had told him there was nearer 275 acres. Stewart had responded that would be settled then by a survey and witness had agreed to that. Dr. Stewart had said he wanted the whole tract and Ball likewise was not willing to sell only part. Stewart had talked with witness as to whether he could get an option (p. 49) and witness had objected and declined. Ball (p. 55) had positively refused to give him authority to give an option and he had never given any. When he read in the contract drawn by Thomas about the contract becoming null and void (p. 49) he had asked what was meant by that and Thomas told him it was a protection to witness. Witness inquired why and Thomas replied because if witness had another offer and Dr. Stewart refused to comply "that I could have an option and I could force him or I could make him forfeit the \$500." Witness thereupon said all right and signed. Roberts later came in and witnessed the paper. It had been agreed each side should pay half the taxes for the year as witness had told Stewart it was his place, he had bought it, and Ball could not cut wood or crops off it. There was a positive understanding (p. 55) of all parties it was a *bona fide* sale and no option; that Ball had given him no authority to give an option. It had been agreed between them Mr. Latimer should make the survey (p. 57).

Joseph K. Roberts testified (p. 60) he had done as much title examination work as any man in Prince George County and had been engaged by Griffith and Stewart, first through Thomas, to look up the Ball title. Prior to that Stewart and Leapley had told him they were trying to negotiate for the Ball property with Griffith. He was not present when Thomas drew the agreement of sale, but was called in by Dr. Griffith and went over it with

Griffith and Thomas, said it was all right and witnessed it. It was understood there was to be a further agreement along the same lines drawn by witness. He had previously drawn a power of attorney for Griffith with reference to the Ball property, but did not recollect drawing more than the one offered in evidence. He had charge of the matter in a way for both Griffith and Stewart. Nothing was ever said to him about an option or forfeiture.

J. Alfred Ridgeley testified (p. 70) that he had gone to Ball's house with Griffith about the first of June and there were two powers of attorney executed on that day before him from Ball to Griffith. In answer to the attorney for Stewart he testified (p. 71) that he had certified to two powers of attorney on one day before the death of one of the Balls and after the death of one of them toward the latter part of the same month or thereabouts to another power of attorney. In response to a call made by the defense there was put in evidence (p. 73) the power of attorney executed by Alfred Ball for the land in controversy on June 4, which included Griffith's commission, this power of attorney being recorded in the office of the County Register of Wills; also a power of attorney executed June 27 with relation to other land than that in controversy acquired by Alfred Ball meanwhile through the death of his brother, James T. Ball, and a certified copy of the contract of sale or deed with a power of attorney attached recorded by Stewart in the County Clerk's office (Rec. 328). Objection was made by appellant to this last power of attorney as a mere copy certified to by appellee as appeared from the signature and last certificate of J. Alfred Ridgeley, J. P. Thereupon Griffith's counsel called on Stewart to produce the check

Stewart had given the County Clerk for recording for him (Stewart) the paper objected to and the power of attorney given to Thomas.

For the defense George R. Leapley testified (p. 88) that Stewart tried to lease the Ball property, but Griffith said the Balls wanted to sell. Stewart then talked of an option and Griffith replied he could not say until he saw them. Stewart asked if Griffith had a power of attorney. Griffith said no, and Stewart said that must be gotten the first thing, and Griffith agreed to get it and meet Stewart at Centerville about 4 in the afternoon. He and Stewart drove to Centerville and thence to Ball's house, where they found Griffith and Magistrate Ridgeley. Griffith and Stewart went apart and talked. In the talk before going to Ball's house the price was named as \$10,000 for 240 acres, but Stewart wanted to pay \$250 cash and they settled on \$500. He remembered nothing as to the place being said to contain 275 acres; all he heard was 240 acres and the survey was (p. 90) to be made to establish the lines. Witness testified (p. 202) he did not think the price or the time was settled on before they went to Ball's house, nor (p. 104) had they effected a binding agreement because that was why Stewart went to Ball's house. He thought Griffith had said the best offer he could make Stewart was \$500 down and the balance of one-half of the purchase money in five months.

A. W. Thomas testified that Stewart had reported to the oil company he could get an option on the land for \$500, and witness went to Marlboro to execute that understanding (p. 108). Over appellee's objection minutes in the form of loose leaves of meetings of the oil company were introduced stating an option had been bought. He told Griffith (p. 111) he came to carry out

the agreement made with Stewart and the terms were stated. Griffith said a survey would be necessary to set out the burial lot and because a small tract had been sold off they agreed each should pay half the costs and that Latimer should make the survey. Griffith said the title was good. It was agreed Roberts should make an abstract, but witness stated he, of course, should pass on the sufficiency of the title. He had demurred over expenses for the title and for taxes, but finally agreed. He drew the contract while Griffith went out to find Latimer and Roberts. Latimer came in and they made arrangements. Witness had not said Stewart could be forced to take the property (p. 112). "I simply said that meant that if the money was not paid on the 7th of November as the contract called for the \$500 would be forfeited." After the contract was drawn Roberts was found and said it was satisfactory. In the early part of the interview he had asked Griffith if he had power of attorney, and Griffith said he had, but not there. He thought Griffith said the notary had it but he would send it or a certified copy in the morning. Roberts suggested it would be better if he typewrote the contract in duplicate and have Griffith and Stewart execute it, and it was arranged he also should bring the power of attorney. Roberts was not to draw the contract along the lines of witness' contract but simply to typewrite it, and in fact he made no changes whatever. (Note: The two papers show changes were made.)

Griffith was mistaken in saying he gave witness a power of attorney. He had said to Griffith (p. 114) the \$500 would be forfeited and the whole thing was a gamble (see p. 112). Roberts the next day came to the office of the oil company, where witness was, with the

typewritten copies executed by Griffith, and there had been added an acknowledgment before a notary. Witness and he compared the copies. Roberts showed him the power of attorney (p. 115). It was the power now on file in the Orphans' Court. Witness remarked he now understood why Griffith did not show him the power of attorney yesterday; he is to get \$5 an acre commission. Roberts laughed and witness said business is business. Dr. Stewart came in hurriedly, asked if there was a power of attorney, but did not read it and then signed. To the best of his recollection he never had seen the short power of attorney on the back of the contract and recorded with it in the county clerk's office until the case came on for hearing (see p. 326). He had not said to Griffith the forfeiture clause was a protection to him. Griffith had asked about it.

On cross-examination (p. 125) witness said they were particularly anxious to get the Ball land. The conversation as to the power of attorney occurred at the beginning (p. 129). Dr. Stewart did not know one had been obtained was why witness asked. The whole matter was hurriedly done. He claimed it was stated in the contract he was to pass on sufficiency of the title; at least it was not stated Roberts was. The contract was then read from (p. 130). Witness said it was evident. Roberts had inserted his (Roberts) name there. When witness' manuscript contract was drawn he had not seen Roberts, but they assumed he would examine the title. The company's only option was the Ball option; all other lands were held outright or by lease. Roberts had been employed to search and pass on the titles of the land turned by individuals into the company. The agreement recorded at Marlboro, after being signed by Stewart, had

been handed to witness and then put in Stewart's private safe for accommodation of the company. He had asked Stewart to have it recorded. He never had seen the power of attorney (p. 136) attached to the recorded contract of sale and which power of attorney gave no authority to grant an option, and it was a mystery to him how it happened that the paper recorded by the company had the typewritten power of attorney attached to it. He could not say Stewart did not receive it with the signed agreement, nor could he explain how it happened to differ from the one he claimed Roberts showed him June 6. He was the lawyer for the company, but took Griffith's word for it he had a power of attorney, and did not know its terms when he signed the agreement and paid over the \$500. Asked if "I meant what I said. That is all" was the whole of his reply to Griffith's inquiry as to the \$500 clause, witness said that was not his answer, and then went on regarding an old matter. See p. 139 et seq. for balance of cross-examination as to the option and Roberts' employment.

Defendant Wm. W. Stewart testified (p. 150) that he was a practicing lawyer and formerly a dentist. The oil company and likewise himself had offices in his building. Griffith refusing to lease, he had asked if they couldn't get an option, paying \$250 down and six months' time. Griffith had said they might for three months if they paid \$500 down. Witness' main object was to get time. Witness asked if Griffith had a power of attorney. The latter said no, and witness replied it was very important he should get one. Griffith agreed to do so that afternoon and meet witness. Witness said he understood there were 240 acres, and Griffith replied about that, but three or four acres had been sold off, and a burial



lot was wanted reserved, which would necessitate a survey. There was no mention of 275 acres. The price was fixed at \$10,000. He never met the surveyor, Latimer, at Griffith's house. Leapley and he drove to Meadows, and not finding Griffith there at 4 o'clock, drove over to Ball's. A man named Ridgeley was outside the house, and in a short time Griffith came out, and he and witness drew off to one side. Griffith said the Balls would not take less than \$500 down and make the time (p. 152) five months for the second payment. Witness replied he would have to bring the matter before the board of directors, as they had not authorized payment of \$500, and he could extend the time to November 7 for the option. Griffith said the latter would be satisfactory, and it was agreed the \$500 would be sent down by Monday if the board agreed. Griffith said he had a power of attorney, but did not show it. He warned Griffith not to let any one know we were taking an option or others would not lease. The title was discussed, and it was agreed Roberts was a careful lawyer, but witness said the title must be satisfactory to the company, and Griffith agreed. This was Thursday (Note: Thursday, 1903, fell on June 4). He drove to Washington, called an executive committee meeting the next morning, and they finally agreed to take the option. June 6 he was called (p. 155) to the company's office. Thomas gave him the typewritten contract to sign. Witness glanced over it hurriedly. Thomas told him it had been compared and was exactly the same as the one he had signed. "I looked at the option part of it and saw that it was there, and it seemed all right to me." He then signed, left it with Thomas and later placed it in his safe among other oil company papers. He sent to Marlboro for record this typewritten contract he had signed. Thomas said

the power of attorney was there, but witness' recollection was he did not see it. He had not the slightest recollection whether it was a separate paper or joined to the typewritten paper he signed. He could not say whether the power of attorney was attached when he sent the contract for record or not. He had said nothing (p. 168) to Griffith about the taxes. His only communication with Griffith on that subject was in letters produced. He called Thomas' attention to them, and the latter said at it was only a trifling amount and as they didn't know whether they would take the property or not, witness better pay them by his check, and the company would pay him. The price was changed from \$10,000 to \$40 an acre, because at the Ball house the number of acres was discussed and as there was a reservation of a burial lot and three or four acres had been sold off, they could not arrive at any figure, and Griffith suggested \$40 an acre, which he accepted. He never had seen Latimer prior to Latimer's testifying.

On cross-examination witness said he was tall and slender, and Thomas short and chunky (p. 170). There was nothing considered in his talk with Griffith except an option—no talk of a sale (p. 177). Witness had said he was sorry Griffith could not get a six months' option instead of five, and Griffith's reply was it was because the Balls usually arranged to cut their wood November first. His check may have been given to Thomas as early as 8 o'clock the next morning, because Thomas was urgent to have the deal go through. He was not so glad to make the deal as the others. He had not used the word option (p. 180) in his letter because that was "agreed upon and it is in the contract." It was not his purpose to have a contract so drawn Griffith might think

it a sale and he could claim it was an option. He considered it important Griffith get a power of attorney, but believed Griffith would not exceed the powers it gave him. He was in a hurry the day he signed and had depended on Thomas, as to the power, the option clause seeming perfectly clear, and he had no real interest. He did not believe he had seen the power of attorney attached to the contract (Note: Neither of the powers of attorney gave Griffith authority to grant an option but authority to sell outright on time payments). The reason the price was changed from \$10,000 to \$40 an acre was because some had been sold off. Witness also might have said \$10,000 was excessive. That was not the main reason. The main issue was to get time. He learned of Griffith's compensation from Thomas the day he signed but did not learn what fools they were in paying \$500 on the contract until they later investigated the power of attorney. Roberts' report on the title had been accepted by him as to witness' other properties. He did not know in the agreement he signed (p. 185) there was the sentence as to Roberts' searching the title. Asked if he knew as to the survey provision, witness replied he knew the number was to be 240 acres. It was correct he gave little heed to the matter, and the reason was because he relied on the company's attorney. He sent the contract of sale or deed to be recorded, but how it was that when recorded the power of attorney was part of it was a mystery that could be explained better by appellee than himself. When returned to him the power was attached and all of it had been recorded. When sent for record there was no reason to believe any controversy would arise. He had mailed the paper recorded to the county clerk and had no knowledge (p. 187) Griffith knew of his mailing

it. He positively denied (p. 191) Ball claimed there was 275 acres, and that a survey should settle it, or that it was agreed there was a sale.

The company had no other option in the county than that of Ball. Witness had held an option on the Hinchman farm, but forfeited it. Complainant put the Hinchman option in evidence (p. 326). By it for \$100 it was agreed Stewart "shall have a negotiable option of purchase upon said property for \$3,200."

Frederick Briggs (p. 206) and Rene Baughman (p. 219) testified, over objection, it was reported to the oil company an option had been bought. Motion was made to strike out all Briggs' testimony on ground he had read over the evidence shortly before testifying.

George K. Flynn (p. 212), Elisha Ferguson, and James Branson (p. 218) testified over objection Ball had said the deal would be off if balance not paid by November 7. The reputation for veracity of these witnesses was impeached (p. 227 et seq.).

Dr. Griffith (p. 233) testified the justice of the peace Ridgeley never had the power of attorney in his possession, and Roberts could not have shown Thomas the power of attorney including his commission because it had remained in witness' safe since acknowledgment until filed in the Orphans' Court after Ball's death. Witness did not know the typewritten agreement and power of attorney delivered to Stewart was recorded until after it was taken away. Ball (p. 237) had told him under no circumstances to give an option. He and Stewart had agreed as to the taxes, Stewart may have remarked \$40 an acre on 240 acres was nearly \$10,000, but the agreement was on \$40 an acre based on the survey. Latimer had been at his office dozens of times, but witness had not seen him there with Dr. Stewart (p. 240).

Joseph K. Roberts in rebuttal testified he had not brought the power of attorney with the commission in it to Washington June 6. He never had that power of attorney before Ball's death because Griffith held on to it. His conversation with Thomas (p. 241) when Griffith's commission came up, occurred after Ball's death and after the Orphans' Court had passed its order. Witness thought the agreement called for him and not Thomas to pass on the title. The typewritten agreement he and Thomas agreed embodied the agreement reached. It with the power of attorney attached, the Marlboro land records showed, were regularly and consecutively recorded. He had typewritten (p. 245) the certificate made by Griffith and Ridgeley and gave Stewart or Thomas the whole paper June 6.

Griffith sent Stewart's \$500 check to his bank at Laurel, Md., and after learning it had been honored, took \$400 (p. 55) and the contract signed to Ball, who, Griffith testified upon the assurance of Thomas that it was an out and out sale, signed a receipt ratifying the sale. This written paper, dated June 19, was put in evidence (p. 80.) The bill had alleged simply a ratification, and Justice Anderson found an oral ratification sufficient (p. 37). Up to his death Ball stood ready to make any proper deed and to complete the agreement (p. 56). The defense (appellant) calling for the same, a statement was procured from the cashier of the Laurel Bank, and by agreement put in evidence (p. 199) stating Griffith had deposited Stewart's check for \$500 June 6, and June 18 had written directing if honored to place \$300 to credit of Alfred W. Ball, where it remained until Dec. 5, 1903, when transferred to Griffith as executor. Griffith testified (p. 59) Ball told him to deposit \$300, and he gave Ball

\$100 per request. On rehearing this matter was gone into at length. See pages 279, 305-6.

Roberts, June 11, 1903, reported the title as good in A. W. Ball (p. 314) and gave his abstract of title to A. W. Thomas (p. 116), who notified Stewart thereof (p. 194). It remained thereafter with either Thomas or Stewart. No objection of any sort was made to the title prior to the death of Ball, which occurred about midnight November 5 or one o'clock A. M. November 6.

Griffith called on Stewart a number of times in the interval regarding the matter and wrote him also. He made no memorandums of his interviews before or after death and could not carry the times in his head (p. 57). At Ball's request (pp. 54 and 55) he called on Stewart about October 15 regarding the survey, Griffith testified Stewart then asked him to delay the survey till after November 7, and he reluctantly consented, and after consultation with Ball agreed to wait, Stewart then for the first time saying he had agreed to let the oil company have the land. Two days before Ball's death he received a letter from Stewart saying he would like to see him before November 7. Letters from Griffith to Stewart in September and early November were introduced (pp. 156, 158). Stewart testified Griffith made several short pop calls between June and October. He was in Maine after October 10 until November 1 (p. 157). He denied asking Griffith not to agitate the matter and survey or that he ever waived a survey before November 7 (p. 161). Griffith had asked him what the company would do at expiration of the option. He replied he did not know, it depended on the company's prospects. On one pop call (p. 170) Griffith had suggested the oil company sell stock and buy the place, but witness refused to suggest it to the

company. Dr. Griffith in rebuttal (p. 237) denied Stewart's testimony as to their "pop call" conversations was true.

After Ball's death Griffith saw Stewart soon after the funeral (p. 54). Stewart fixes the date as November 9 (p. 161). Their evidence differs as to who first said Ball was dead. Griffith testifies that Stewart said that would alter their arrangements a little, and he replied nothing further could be done until the matter was entered in the Orphans' Court. Soon afterwards he again saw Stewart, and the latter then told him he had bought for the oil company, to which witness replied (p. 56) he knew no such thing and would look to Stewart. Stewart told him to go ahead and sell the property if they didn't meet their obligations and forfeit the \$500, witness replying he knew nothing of an oil company. Stewart testified (p. 161) he asked Griffith if he had a deed, and Griffith replied no, but he was executor. He suggested the death complicated matters, but Griffith differing with him witness said he had no interest in it but would present the matter to the oil company. Witness advised a forfeiture and Griffith replied he would like us to have the property, and after a desultory conversation left. He denied Griffith at that time said he would look to witness exclusively. The conversation was short, witness having a patient. He next received a letter dated November 10 (p. 162) from Griffith, saying he had consulted two lawyers, and to let him know positively by the 16th what he proposed to do, as he had a proposition from other sources and power under the will to act, and if satisfactory arrangements were not made by noon of the 16th to consider the matter ended. Nothing was done and he thereafter considered the matter finally ended, and as



the oil company did not put up any money witness was much elated it was settled. Griffith in rebuttal (p. 237) testified that at the time this letter was written he had not qualified as executor. He had written the letter because while at the time he had no authority to act he wanted something definite to bring before the Orphans' Court when the will was admitted to probate. He did not know Stewart was worth any property on which he could recover the price of the land, and had another offer the very day he wrote Stewart. The matter was mentioned by him to Attorney Roberts before the court assembled, and Mr. Roberts said nobody had any right to violate the contract, that it was in the hands of the court. The lawyer, J. K. Roberts, told him he would only bring on a lawsuit if he disposed of the property except to Dr. Stewart under the contract. The matter was then put into the hands of the Orphans' Court.

Alfred Ball's will was probated November 17. By it he gave Dr. Griffith, as executor (p. 13), "full and complete power and authority over my entire estate, real, personal and mixed," with authority to sell "my real estate of which I may die seized and possessed at the time of my death" by public auction on such terms and conditions as the executor should think proper. Two thousand dollars was bequeathed to the Methodist Church in trust to be paid out of his personal estate, together with funeral expenses and cost of a monument, but if the personal estate be insufficient, out of his real estate. The proceeds of his estate, after the specific bequests, were to be divided among his direct kin. The will was dated July 10, Ball's brother, James (p. 305) had died, leaving him (p. 48) a farm.

After Griffith qualified as executor the Orphans Court

of Prince George County on December 15, on petition filed by the executor, passed an order (p. 15) authorizing the executor to carry out the contract made by Griffith in his lifetime and to execute a deed conveying a good fee simple title to the land in controversy.

Griffith had two interviews or more with Stewart in November. He had never declared the contract ended in these interviews, but had said his power as agent of Ball ceased at Ball's death (p. 59), but the court could take it up where it was left off. He never had acquiesced and had no authority to acquiesce in a refusal on the part of Stewart to carry out the contract. He had Mr. Latimer make a survey and this survey was offered in evidence. Surveyor Wm. J. Latimer testified (p. 76) that he was engaged by Dr. Stewart and Dr. Griffith to make the survey, but was not notified to begin until the middle of November. He began field work about November 15, but fell on the field and had to be carried home November 20. His son, under his instructions and supervisions, completed the field work. He had about fifty years' experience in surveying in Prince George County and was intimately acquainted with the Ball tract and surrounding lands. He had found the old Ball boundary stones, etc. He identified the original survey map or plat and said it had been made by his sons under his directions; he knew it to be correct and signed it, individually, about the middle of December. It showed  $288\frac{2}{3}$  acres in the tract. The son, R. E. Latimer, also testified (p. 80).

On November 23, A. W. Thomas sent a letter to Attorney Roberts (p. 117) stating he had examined the proceedings at Marlboro, and the will; that he did not believe a good title could be procured through the court, and that other steps were necessary to furnish a perfect

title. He then said the agreement should stand pending perfection of title, and that he had so notified *Maryland Oil & Development Company*, the real party. On the same day, Stewart wrote Griffith to the same effect (p. 164), the letters evidently being a joint production, and was promptly advised by letter by Griffith that he knew Stewart alone in the matter and would look to him alone. Stewart testified he had no part in procurement of the Orphans' Court order (p. 165). He had notified Thomas he would write Griffith. Witness denied (p. 188) the two letters were joint productions. He supposed their close resemblance was from their conversation on the subject.

Early in December Griffith called on Stewart to carry out the contract he had made. The result was neither a refusal nor an agreement on the part of Stewart to carry out his contract. The boring for oil had continued all summer and autumn and was in progress the early part of 1904 (pp. 58 and 174). During this time there was a change in the drilling system (p. 165) and Stewart frequently at this time was confident oil would be struck.

If oil were struck the purchasers were ready to pay any price (p. 165), and Stewart, who owned three farms across the road from the Ball farm and further from the oil well, which he had bought before there was any known oil excitement, it being all under cover at that time (p. 172), expected enhancement in values all through the section. He testified: "I hoped there would be oil found on the oil tract proper and I invested more money than I ought to have on that prospect (p. 173). One day I was up in the air and the next day down in the depths of despair." This state of mind continued through the autumn and the month of December.

Wm. E. Ambrose, lawyer, testified that some time after November 23 he called at the office of Dr. Stewart with Dr. Griffith. Stewart invited them to the office of his attorney, Mr. Thomas. Witness stated he had come to offer a deed to the Ball tract concerning which Stewart had entered into an agreement with Griffith. Thomas interrupted that they could not give a good title and this was discussed pro and con. Thomas, as attorney for Stewart, raised numerous objections. Ambrose testified, and particularly to the authority of the court to authorize the executor to convey. Witness explained the statute, but was unable to satisfy Thomas, although Stewart was more amenable to reason. No objection was offered to the abstract, but to the title. Witness offered to leave the matter to any title examiner, but nothing definite was determined except that Roberts so far had been satisfactory. Finally, Griffith, Stewart and himself went out into the hallway (some gentlemen coming in) and there it was agreed Roberts was to continue the title work, cure such defects as could be cured, and his ultimate opinion would be satisfactory to Stewart. Before going into the hallway, Thomas promised in a day or two to give witness a statement of his objections, to be submitted to Roberts to pass on any claimed defects. Stewart wanted Roberts to continue the work and cure defects, if any necessitated action. No claim that there had been a forfeiture was made. Witness asked Stewart if he desired to carry out the contract if a good title could be had and Stewart stated most emphatically he had no end in view but perfecting title and the taking to himself of the land; that he had arranged to buy it and would be disappointed if he did not get it. He had then asked Stewart if he wished to drop the matter and let the \$500 he had paid

go. Stewart said he did not and that he wanted the land. He (p. 80) had said to Stewart if he claimed the right to suffer a forfeiture witness wanted to know it. The delay occasioned by Ball's death and any defects his attorney considered existed Stewart said would not be taken advantage of by him. Griffith and Stewart agreed to abide the survey, but the fact of a larger quantity than the contract specified was discussed. He went to Thomas' office several times, but Thomas said he had been too busy with oil matters. A week or ten days later Thomas handed him a letter setting forth his objections. Witness promised immediate attention and asked again if a good title could be had would he take the land, meaning Stewart, and Thomas so understanding. Thomas replied he would, that only the title bothered them, and so soon as Roberts satisfied him the title was good Stewart would complete the purchase. One objection was a possibility certain persons interested in dower might be living, and affidavits were to be had showing their death. (See affidavits death Elinor Ball, p. 29.) Dr. Griffith unqualifiedly tendered himself ready to carry out the contract and there was an acceptance of that tender with no reservations as to any other question than the title.

Witness laid out his course of action (p. 75) at Stewart's office with Mr. Merillat before going over there. He later turned over all papers to Mr. Merillat, whom he took into the case. He had gone to Stewart to ascertain his position, but had then no authority to sue nor reason to believe suit would be necessary. Dr. Stewart contracted with Dr. Griffith to do a certain thing, but when he went there he found Stewart and his attorney raising technical objections to a record title that necessarily involved delays.

Dr. Griffith testified (p. 57) that after he got from the Orphans Court power to transfer the property to Dr. Stewart after having submitted the contract of sale and after he had a deed and mortgage ready he went with his lawyer, Mr. Ambrose, to see Dr. Stewart, and informed the latter he was ready for compliance with the contract. Stewart, in the presence of his attorney, Thomas, said he was ready to comply with the terms of the contract, but he did not consider the title then complete. Mr. Ambrose had asked him if he would comply when the title was satisfactory and complete, and Stewart had replied that he would. Stewart stated that Mr. Thomas thought there was a link missing between the time of completion of Roberts' abstract and the then present date, and witness agreed to make that good. Boring for oil and purchasing of property was going on until some time in the winter—November and December.

The abstract originally made by Mr. Roberts in June, 1903 (R. 314), that later made by him under date of December 15, 1904 (R. 17), and a later continuation to February 9, 1904, all showing a good title in Ball and later in Griffith, are in the record after having been duly proved, as are certain affidavits (R. 29) procured to meet certain suggestions made by appellant. Also a letter from appellant's attorney, A. W. Thomas (R. 320), dated December 17, 1903, raising certain objections to the title.

Dr. Griffith further testified (p. 58) that when he and Ambrose first saw Stewart they merely said they wanted the missing link supplied to bring the title to date, and Stewart said he would be willing to accept the property if the title was made complete, and they agreed Roberts should look into the matter, and Roberts had done so at witness' request. He had never acquiesced in a refusal

on Stewart's part to carry out and perform the contract; never did such a thing and never had authority to do such a thing. When Stewart had told him the title was not good he had told Stewart he was worth as much property as was involved and would give a warranty deed or guarantee to the title and make himself responsible for it. Shortly before suit was brought he had called on Stewart with Ambrose and Merillat, and Stewart became angry, declined to carry out the agreement and sent for his lawyer.

Jos. K. Roberts, an attorney of Marlboro, Md., testified (p. 61), that after the death of Ball he, at the request of Griffith, had gone to see what Stewart was going to do in the purchase of the property. Thomas did most of the talking. Stewart was present. Thomas said the title was not satisfactory because Ball had died and the heirs would have to sign, and he could not get a good deed. Witness tried to explain how, under the Maryland practice, the administrator could be authorized to execute that deed, but this did not suit Thomas, who said the court had no authority in the matter and the heirs would have to join in the deed. He had told them the heirs were so badly scattered they (heirs) could never be gotten, whereupon counsel for appellant, Mr. Edward H. Thomas (not A. W. Thomas), put on record (p. 62) an objection to the suit because the heirs were not parties. Nothing was said about the oil company or about an option or a right of forfeiture. Witness had charge of the matter in a way for both parties and used to go to see Stewart about it often. Witness put the matter in the hands of Mr. Ambrose. He had prepared two abstracts, one to meet objections by Mr. Thomas. He had received no objections to his abstract of June 11 until after Ball's death.



A. W. Thomas testified the Ambrose interview occurred December 8 (p. 118). He was given an Orphans' Court order and a deed from Griffith, executor. Dr. Stewart said it was the oil company's matter. Ambrose said he did not care. Witness said it was the oil company's matter and he represented the company. Stewart said witness did not represent him and it was the oil company's matter. The survey was not handed him, but Griffith stated that there was 284 or 288 acres instead of 240. He was present during all the conversation and denied Ambrose's testimony. Stewart said he wanted the land or was satisfied with Roberts' work. Most of the conversation was between himself and Ambrose. Witness said the abstract was not down to date and was not satisfactory for several reasons and he would state them later, which he did December 21 in letter dated December 17. (See p. 319.) Witness denied it was true (p. 121) as testified by Ambrose that some gentlemen came in and he and Griffith and Stewart went into the hall. They were to hold a meeting that day, and Griffith and Ambrose went away, leaving Stewart in the office, to his best recollection. Dr. Stewart remained inside and the meeting was held then and there and he had entered it in the company's book. Examining the book, witness said he found he was incorrect, that he sent out the notices for a meeting that day. He denied Ambrose's testimony in detail. He had insisted the Orphans' Court was without jurisdiction. Ambrose also was incorrect as to witness' statements to Ambrose ten days later.

On cross-examination witness said they, in November, were boring for oil and were generally hopeful of striking oil, but sometimes broken-hearted. He did not think his personal feelings as to whether in December he was

ready to relinquish all right to the land had any bearing on the contract. He asserted that in the interview with Ambrose and Griffith he represented the company of which he was secretary. His position (p. 133) was that by Ball's death a good title could not be given then and that to make title was Griffith's first step. He had objected that the abstract sent him only ran down to June 11th and he had said the first step was to make that good. He had raised a number of objections. He had had the abstract (p. 144) from June until after Ball's death and never had until after November 7th raised any objections to the title, but could not say as to Stewart. Roberts had called his attention to the abstract. Witness when asked (p. 146) if he had said to Griffith the contract would be carried out if title were perfected, said he did not, but said it would stand, meaning, he added, of course the contract with the oil company. What was to happen if the title was perfected he had not said. He guessed neither party got any clear idea of what would be done. He was cross-examined at length (pp. 146-149) as to whether he was endeavoring to gain time and be free to claim rights or not, as the oil drilling might turn out, but said intentions were vague things and nothing definite had been said by him and nothing agreed to on December 8. The matter did not rest on his *ipse dixit*; the courts were open to them. He could not be sure of all Ambrose had said and whether he had said anything about the oil company being a matter between the company and Stewart that did not concern Ambrose. He was only secretary and could not bind the company and did not assume to. The office of the company and his law office were in the same room. He was not prepared to speak as to whether his purpose was to keep foot loose but to keep Griffith tied.

Dr. Stewart testified (p. 166) that on December 8 Griffith and Ambrose called on him and he showed them to the office of the Maryland Oil & Development Company, where one of them handed him a paper, which he immediately passed over to Thomas, telling them he had nothing whatever to do with the matter and that it concerned the oil company. Thomas told them certainly it was the company's matter and witness was only the nominal party. Ambrose said he did not care, and there was a title discussion, Thomas saying it was insufficient. Ambrose said there was 288 acres in the tract, which was the first he ever heard about there being over 240 acres. "I had no conversation at all. I did not say another word after that with Griffith or Ambrose. I was too mad to express what I felt. I did not join in this discussion about the title." He denied Ambrose's testimony was correct. He did not go out in the hallway. There was no such conversation as testified to by Ambrose. There was no conversation wherein Griffith had agreed (p. 168) to make himself personally responsible for the title.

On cross-examination witness denied (p. 192) that he continued any negotiations after November 16. He had disclaimed responsibility. After July the executive committee of the oil company had charge of the matter. He ceased to be president, but continued as vice-president. When he got the letters from Griffith in September he did not refer him to the oil company, "because we were in the midst of our drilling. Things were looking pretty fair and we did not want it known and did not give it much concern. The agreement was entered into and was recorded and that is all there was to it." In November and early December he positively did not care personally whether they held on to it for a while or not. The exec-

utive committee stood "pat" on the matter, as title had not been given or a deed presented on the date. No demand was made for the \$500. No objection to the title was made prior to December, but that was with Mr. Thomas, the company's attorney. Asked if in October (p. 200) he had requested Griffith to delay the survey, witness said he did not remember any such conversation. He denied taking any part whatever in the conversation of December 8, it was held with Thomas.

Rene Baughman testified (p. 200) that he was present in the fall or early winter of 1903 in the oil company's office when Griffith and his attorney called. Briggs and Lucas and himself entered the office together. The others already were in the office. His business was in reference to Lucas tendering his resignation as president. Dr. Stewart did not go out in the hall and had no conversation while witness was there with the gentleman. The meeting was in force, Dr. Stewart was president or chairman of the executive committee and could not leave. He did not vacate the chair.

On cross-examination, witness said the room was about 10 by 12. Stewart was 10 or 12 feet from the door. Griffith and his attorney were about five feet from the door; they were not in the act of leaving, but remained standing two or three minutes after witness, Briggs and Lucas entered. Their entry did not interrupt the conversation. Stewart was not participating in the conversation. He was certain Stewart did not see the gentlemen to the door, because the meeting was called at once. What attracted his attention was because the conversation was about title to the property. The only thing he remembered being said was about getting the heir to sign the deed. As soon as the gentlemen moved out they called

the meeting to act on Lucas' resignation, and they certainly would not let Stewart go out. (Note: Thomas testified the company's records show the meeting was not held that day but the next day.)

In rebuttal Griffith (p. 238) denied Stewart at the interview told him and Ambrose he had nothing to do with the matter and that when he handed Stewart a paper he turned it over to Thomas for the Maryland Oil & Development Co.

J. K. Roberts testified (p. 245) that after Ball's death he informed Griffith he would have to submit the matter of the Stewart agreement to the Orphans' Court and act under its orders. It seemed some one else was after the property and Griffith asked witness what he could do and he told him.

Wm. E. Ambrose questioned (p. 247) as to Stewart's testimony that he (Stewart) when Griffith and Ambrose called had immediately handed the paper over to Thomas stating that he (Stewart) had not anything to do with it, that it was entirely the oil company's matter and that thereafter he (Stewart) had nothing to do with it, replied: "I have no recollection of any such statement." As a matter of fact, Stewart did have negotiations with him after the first moment of witness' call.

There was put in evidence a further title report (p. 24) by Roberts, dated December 15, 1903, certifying to the title as good and that a deed from the Orphans' Court under its orders of November 17, 1903, and December 15, 1903, would convey a good title to Stewart and also a continuation (p. 29) down to February 9, 1904.

Evidence was offered of a further tender to Stewart of a deed, mortgage and title just before suit was brought and of Stewart's February 15, 1904, refusal.

By Attorney Roberts (p. 63) evidence was offered that Alfred W. Ball had no other property in the county early in June, 1903, than that in controversy; that Ball was in possession and exercised control over the entire property shown by the survey. Witness knew this from its location and surrounding properties.

Columbus Pumphrey (p. 67) testified that he had lived near the Ball tract forty years and knew Alfred Ball's father and Samuel J. Fowler (p. 69); that he had lived near the Ball farm off and on ever since his birth in 1835, and that the Balls had held possession without interference or adverse claim to any part of the land after Henry T. Ball died or since. Henry T. Ball's will probated September 18, 1877, was put in evidence (p. 311).

Over appellee's objection that evidence as to values was incompetent, since no misrepresentation was alleged, considerable testimony was taken as to values. That for appellant claimed the land was not worth over \$10 an acre, and Stewart said he would not have bought it at any price personally, and that the oil excitement had no effect on values; while that for appellee placed the value at \$20 or \$25 an acre, irrespective of the oil excitement, which had considerably increased values. The evidence as to values will be found at pages 63, 68, 71, 92, 94, 98, 124, 153, 172, 202, 208 and 210.

The justice presiding, after argument, passed a decree in favor of appellee (p. 329). Thereafter appellant filed affidavits alleging experts would testify the long power of attorney and ratification were forged, and claimed they had not received as full a hearing as they were entitled to; whereupon the justice reopened the case and testimony was again taken. At the rehearing, after listening to appellant's statement of their testimony, the justice de-

clined to hear argument on it, saying it was too weak to be seriously considered, but at appellant's insistence said he would listen as to any law points. After argument, he ruled that the heirs were indispensable parties, and personally directed that the word "alone" should be inserted in the decree (p. 369) in favor of appellant, saying it was solely because of his change of views as to heirs he reversed himself and the word "alone" must be inserted to show that, as he was taking a train for his vacation that afternoon and had not time to write an opinion.

The testimony on rehearing appears at pages 255 to 309. It appeared Ball had on file at Marlboro his renunciation of administration on Jim Ball's estate and a bond signed by him. Appellant subpoenaed these papers, but objected to their introduction in evidence. Wm. J. Kinsley testified Ridgeley had not written his signature to the long and short powers of attorney and that the same hand did not write the ratification or the long power of attorney that wrote the will signature of Alfred W. Ball and to the deeds and Jim Ball power of attorney. He had previously known which signatures were disputed and took the others as standards. On cross-examination he said there were no resemblances except the name was the same. He was a professional handwriting expert; it would not alter his opinion if a man said he himself wrote both signatures. He refused to pass on the bond and renunciation signatures. A man who seldom wrote would write more consistently and even than one who wrote often. Ball was a consistent writer.

Edward Schaeffer, a professional handwriting expert, and also a tutor, said the two Ridgeley signatures were not genuine. The long power of attorney he regarded as



a poor imitation of Ball's signature. When employed he knew which were the standards. The long power of attorney and ratification were not genuine if the will was, but the Jim Ball power of attorney and two deeds were. The will signature was of one not used to writing and not having facility in use of the pen. He had examined the papers first March 23. The long power of attorney signature differed so from the standards he early desisted from its study. On cross-examination he said he first examined the papers March 12 and he gave an opinion that day. It was strongly probable the person who wrote the body of the ratification also signed it. There were no common characteristics to all the four Ball signatures. He would not pass on the bond and renunciation signatures. He would place his opinion above a justice of the peace of good repute who had seen the names signed. Good control of the pen was not necessary to uniformity.

Edwin B. Hay, attorney and handwriting expert, testified that in his opinion the signatures to the ratification and long power of attorney were not genuine if the will, the deed and the Jim Ball power of attorney signatures were, and the Ridgeley long power of attorney signature likewise was not genuine. The Jim Ball and will signatures had been submitted to him as genuine and he therefore assumed they were, though there was a marked dissimilarity between them. Cross-examined, he said a variable signature made handwriting evidence less certain and the Ball signatures showed great variability. The same person wrote the bond, the renunciation and Jim Ball power signatures. It was natural to the writer to have differences in his signatures. Age and circumstances all would account for differences.

Philip Happ (p. 270), paying teller in a bank, called

by Stewart, testified the ratification, the will and the deed signatures were by the same person. The long power of attorney signature he would not pass on. Cross-examined by appellant's counsel, he changed his mind. Cross-examined by Griffith's counsel, he said the bond and renunciation signatures were by different persons. All the signatures were of an irregular and variable writer. He had known signatures made on the same day to show considerable differences. The same person signed the bond, the ratification and the long power of attorney.

David N. Carvalho, handwriting expert, testified the Ball signatures to the ratification (p. 272) and long power of attorney were not, in his opinion, by the same person who wrote the will, the deed and the Jim Ball power of attorney signatures. The Ridgeley signature was not by the same person, in his opinion, as wrote the Ridgeley signature to the Jim Ball and short power of attorney. The same person who wrote the Ridgeley signatures to the long power of attorney wrote the disputed Ball signatures.

Cross-examined, witness said he assumed, and from what he had been told by Stewart, that the signatures he had designated as the disputed signatures were questioned. He declined to say whether the same person wrote the body also had signed the ratification, and said he did not want his direct testimony as to a Greek E to be so taken. The conceded signatures were those of a very erratic writer—unusually so; an illiterate, outrageous signature. There were tremendous variations of hand and standards. The bond and renunciation signatures were genuine. His attention being called to it, he said there was a distinguishing peculiar, simple characteristic present in all the Ball signatures in the case—a slight

stop or emphasis at the end of the W. A busy country doctor would not be likely to observe such a small peculiarity; he was testifying only to a matter of opinion. He made no pretensions to infallibility. In the Mayhew deed Alfred W. Ball in the one signature showed wholly different styles.

George W. Waters, cashier of the Laurel National Bank (p. 278), and W. Howard Gibson (p. 280) of the U. S. Treasury, testified for appellee that in their opinion all the Ball signatures were by the same person, and all the Ridgeley signatures were by another person. The latter based his opinion quite largely on the rest of the finish of the W in the Ball signatures, saying none but an expert counterfeiter, and perhaps not such a man, would notice it. Both said they would accept the word of any reputable person who said he had seen Ball sign the disputed papers.

Willey O. Ison, a Treasury clerk, whose duty was partly to examine signatures, testified (p. 283) that the few signatures and their variable character with the many marks of dissimilarity in all the signatures made the formation of a definite opinion difficult, but he would accept the word of any reputable person who could state he had seen Ball sign his name.

John T. Fisher, clerk; C. W. Claggett, lawyer; C. A. M. Wells, lawyer; C. A. Wells, consulting physician and bank president; C. W. Darr, lawyer; Buchanan Beale, deputy United States marshal; Richardson N. Ryan, county treasurer (pp. 285-7); Francis E. McManus, Episcopal clergyman; W. R. Smith, register of wills of Prince George County, testified orally, and Judge Geo. C. Merrick and Father Frank A. Schawallenberge, Catholic priest (p. 308) by deposition to the good reputation of Griffith.

John T. Ball, first cousin to Alfred W. (p. 287); John P. Hawkins, colored, who worked about the place for Alfred; Henry Payne, farmer (p. 289); Geo. W. Waters, bank cashier; Benj. J. W. Swayne, a visitor to Alfred Ball's house (p. 278); Samuel J. Fowler (p. 291), with whom Ball proposed to board when he moved away; Richard Swann, farmer and county commissioner (p. 291), and Geo. W. Richardson, stock dealer, all testified to statements by Alfred Ball or to circumstances showing he had sold his farm to Stewart through Griffith and was planning to leave his home. Allen Bowie, lawyer (p. 293), identified the signature on the bond of Ball, and W. R. Smith, register of wills (pp. 293 and 305), testified to matters concerning the conduct of the Balls' business by Dr. Griffith, complainant's counsel stating the matter was irrelevant, but they were willing to admit testimony.

J. Alfred Ridgeley (p. 295) testified again to the signatures of Ball's that he had acknowledged, and also identified his own signatures. Dr. Griffith identified Ball's signatures (p. 297), and testified to details concerning the signatures by Ball that were in dispute. The ratification and receipt he had obtained on a visit while attending James T. Ball, and there was put in evidence his ledger and contemporaneous physician's book of visits showing he was there on the day named. Alfred Ball had sent him a number of short notes to call by various persons on their way to Marlboro. Joseph K. Roberts (p. 299) testified regarding the recorded power of attorney.

Irving Owens, a bookkeeper, testified (p. 300) he had heard a number of people state Dr. Griffith would stoop to anything and was untruthful and dishonest. He named several persons. On cross-examination it devel-

oped Dr. Griffith, for what he considered cause, had denied his home to witness, who wanted to visit and later ran off with and married Griffith's niece. T. Van Clagett, attorney (p. 301), testified he had heard a number of people say Griffith was dishonest and tricky. Owens was one of them. On cross-examination, he named persons whom he said he had heard say Griffith was untruthful. Griffith he said was very energetic and aggressive and as leader of the independent democrats had strongly opposed witness' brother-in-law and uncle and the regular democratic organization. One of those he had named, he admitted, was a railroad hand whom Griffith had sued for a fee, and another an enemy of Griffith.

John H. Traband, carriage dealer (p. 303); Augustin T. Brook, deputy treasurer; Richard S. Hill, farmer and physician (pp. 303-4), who had been named by Owens and Van Clagett, denied the statements attributed to them by the witnesses, and said that in politics they were bitterly opposed to and had attacked Griffith, but that his reputation for truth and honesty was excellent, and they never had said anything against him except his political course.

John T. Fisher, Richard N. Ryan, Francis E. McManus, Hampton Magruder, state's attorney (p. 308), and Frederick Sasscer, editor, testified to Ridgeley's good reputation for truth and honesty.

### **Argument.**

In the opinion of the justice presiding the proof in this case established all the allegations of fact necessary to appellee's right to specific performance. That as matter of law joinder of heirs was indispensable was the sole ground of his reversal of his former decree, and he per-

sonally and specially, stating that he was about to leave the city that afternoon on his vacation and had not time to write an opinion, directed insertion of the word "alone" in the final decree to show this. Appellee therefore comes here entitled to have every reasonable presumption of fact in his favor, as "the conclusions of a chancellor depending upon the weighing of conflicting testimony have every reasonable presumption in their favor and are not to be set aside unless there clearly appears to have been error or mistake on his part."

Tilghman v. Proctor, 125 U. S., 136;

Callaghan v. Myers, 128 U. S., 619.

In addition appellee has the added fact in his favor that the Court of Appeals sustained the chancellor in his finding of facts in favor of appellee and reversed him on the ground that as matter of law the heirs were not even proper parties. This court has said it will not, save for gross error, reverse findings of fact made by two lower courts.

Furthermore, appellant has in his favor the fact that the written evidence made at the time when there was no motive or inducement to falsity accords with his testimony and contradicted that adduced by appellee.

"Those who seek to set aside their written contracts by proving loose conversations should be held to make out a clear case. When they charge others with fraud founded on such evidence their own conduct and acts should be consistent with such an hypothesis."

Ogilvie v. Knox. Ins. Co., 22 How., 380;

See also Howland v. Blake, 97 U. S., 624; Snell v. Ins. Co., 98 U. S., 85.

Moreover, in favor of appellee Griffith, where there is a

conflict of testimony, is the fact that Leapley, one of the chief witnesses for appellant Stewart, is shown to have been a man of bad reputation for truth and veracity, that the same was shown to be true of two or more others of the several county ne'erdowells that appellant put on the stand to testify to improbable and disproven circumstantial interviews with the dead; that in important particulars the appellant Stewart is contradicted by his own writings and his own witnesses on matters as to which he could not in reason be mistaken, and that the record shows he and his attorney Thomas were lacking in candor and frankness, were evasive on the witness stand, testified incorrectly as shown by writings in the case with which they were connected, and in their dealings with appellee were dexterously endeavoring to use the English language to trick and deceive to their own profit the appellee, but were not quite so smart and cunning a pair of promoters and not so learned in the law as they deemed themselves to be. They caught themselves in their own trap. Appellant Stewart being proven by his own letters, the testimony of Baughmann, his own witness, and others to have testified falsely as to matters as to which he could not be mistaken his testimony and Thomas' where it disagrees with that of Ambrose and Griffith is not entitled to credence.

In re Santissima Trinidad, 7 Wheaton, 283.

The contract in evidence is clear, fair in all its parts, reasonable, was prepared, save for a few small changes made therein by Roberts, who was attorney for both appellant and appellee, and whose changes were compared by appellant's attorney Thomas with the original before signature by appellant's own special attorney Thomas, as



shown by the letters Stewart sent to Griffith the day the first contract was signed, and is mutual in its obligations.

"If a contract respecting real property is in writing, and is certain, fair in all its parts, for an adequate consideration (at the time of making) and capable of being performed, it is as much a matter of course for a court of equity to decree specific performance of it as it is for a court of law to give damages for a breach of it."

Maryland Clay P. Co. v. Simper, 96 Md., 5;  
 Cathcart v. Robinson, 5 Pet. (U. S.);  
 Spoor v. Tilson, 100 Va., 517;  
 Sloan v. Rose, 101 Va., 154;  
 Fry on Spec. Perf., 3d Ed., p. 25;  
 Maughlin v. Perry, 35 Md., 352.

"If there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice."

B. & O. S. W. v. Voigt, 192 U. S., 565.

Specific performance as a remedy of right is expressly provided for by Sec. 199, Art. 16, Code of Maryland, in which State lies the real estate in controversy, and which likewise was the home of the making of the contract.

Appellant defended on two primary grounds: First, that the contract, while taken in his name, was made in behalf of a disclosed principal, the Maryland Oil & Development Company, and second, that it was an option contract. When hard pressed, he raised other objections, namely, the title, the acreage as determined by the

survey, the value, alleged acquiescence in termination of the contract, and lastly when all these were determined against him and the decree was signed, by a baseless calumny against appellee and an allegation of forgery, so poorly supported the justice presiding and who had granted the rehearing, after hearing appellant's evidence, refused to permit argument on it and said appellee needed no hearing in its refutation.

Appellee denies there was any disclosed principal. He asserts the only principal he knew was Stewart, the appellant here. In this he is borne out by the two signed contracts, by the personal check of appellant, by the note of introduction given by appellant to Thomas as his personal attorney, by the subsequent personal check for taxes of appellant, by the several notes appellee addressed personally to appellant, and the failure of appellant to disavow personal responsibility for the contract during the summer and early autumn when as appellant in his testimony admits all was fall weather and the drilling was progressing favorably as appellant hoped. The only documentary evidence contrary to this prior to Ball's death is the bill rendered by Roberts to the oil company after the contract was executed and was complete, for half the title examination fee, but the knowledge of Roberts in the first place would not be the knowledge of Griffith nor be binding on him, inasmuch as Roberts was the attorney for both Griffith and Stewart, and, secondly, the charge of Roberts as made out at the time of his first employment when the sale was made and entered in his account books contemporaneously was against Griffith and Stewart personally, and the testimony of appellant's own witness is that it was *after* the contract had been signed by Griffith that Roberts came to Washington and learned the oil company was connected

with the deal. The authorities are clear that where an agent makes a contract in his own name and afterwards it is learned that he signed for an undisclosed principal the other party may hold either agent or principal. All the record evidence is in harmony with appellee's statement he first learned of any relation of the oil company to the deal with Stewart when in early October he called on Stewart in relation to the survey and Stewart asked him to delay because he had given the oil company the right to take the land off his hands, but he wanted the land personally and his word to the company would be kept if the company did not take the land by November 7. Stewart's attempted explanation of his note of introduction of Thomas to Griffith that it was a hurried production is contradicted by his own witness Baughmann, who testified that the note was a carefully prepared letter which had been carefully discussed after it was written and that it was written to conceal the company's identity. The improbability that parties so eager to conceal the real principal would disclose the same to a busy country doctor whose practice took him into the homes of the people who it was desired to keep in ignorance is but equalled by the naive statement that as Griffith knew verbally Stewart was not the real principal, but the oil company was, that the written note was sent *to Griffith*, in order that the identity of the real principal might not become known to others, or the equally convincing statement of appellant that he informed Griffith orally of the real principal because he always does business that way, saying just what he means and doing just what he agrees, when a short time later he admitted saying to School Trustee Armstrong that he personally and not the oil company had bought the Ball farm, although this was

not the truth, because this would serve his purpose of deceiving the public as to the oil company having bought land. After Ball's death, and when the oil fever had reached a stage where he was up in the air one day with visions of millions and down in the depths of despair the next day, Stewart and Thomas each, on November 23, evidently a day of doubt as to oil, wrote letters avowing it always was the oil company's deal, failure to find oil of course involving failure and bankruptcy of the company as a business enterprise. Stewart attempted to deny these letters were the product of a joint authorship, but they bear internal evidence on comparison of their common compilation by Stewart and Thomas. They met the very next day from Griffith a prompt and emphatic written response as to who was the real principal, and that he looked to Stewart alone. The letters of Stewart and Thomas evidently were penned on a day of despair; they doth protest too much. Later, hope sprang anew, and in December Stewart's emotions made him unwilling to let go or definitely hold on. He said to Griffith and Ambrose he wanted the property and meant to take it, but the title wasn't satisfactory and asked it be brought down to date and then had his attorney obtain delay by various claims without merit as to the title, including requests for affidavits as to parties deceased for more than thirty years. If oil were struck he would, as he says, have been willing to pay any price. To Ambrose he held out hopes personally and said he would carry out the agreement and raised objections to gain time. Whatever the real situation between Stewart and the oil company, the evidence is decidedly weak when it attempts to bring home knowledge to Griffith that the real principal was not the person in whose name ran the contracts, the checks and the letters.

### **The Sale was Absolute,-Not an Option.**

The contract is not an option agreement but an out-and-out sale. The authorities are practically, if not entirely, uniform in holding that the phrase in the agreement that if the balance of the purchase money were not paid by November 7 the \$500 down payment should be forfeited and the agreement be null and void, does not import an option contract terminable by default of the vendee, but means that the vendor has the election on default to forfeit the down payment or to compel performance of the contract by the vendee.

Wilkerson v. Stitt, 65 Calif., 596;  
 Dana v. St. P. Ins. Co., 42 Minn., 194;  
 Dooley v. Watson, 1 Gray (Mass.), 415;  
 Western Bank v. Kyle, 6 Gill (Md.), 343.  
 Hooker v. Pynchon, 8 Gray, 552;  
 Mason v. Caldwell, 5 Gilman (Ill.), 196;  
 Hull v. Sturtevant, 46 Me., 34;  
 Cathcart v. Robinson, 5 Pet. (U. S.);  
 Fry on Spec. Perf., p. 56.

Hazleton v. Le Duc, 10 App. D. C., 379, and Cochran v. Blout, 161 U. S., 350, are in logical accord with the above.

Appellants when the testimony was taken asserted that it was improper to go outside the contract or deed signed to show whether the parties meant it to be an option or not. Now they seek just the reverse but are in equally bad case in either view of the matter. Their weakness is shown when they seek to distort the ratification (as shown on page 43 of their brief) into a release of appellant from liability for survey or attorney's cost when it obviously releases therefrom not appellants but appellee.

The testimony furthermore shows that this construction of the written contract or deed as not an option but an absolute sale is in accord with the understanding conveyed to Griffith by Thomas when the contract was signed. Griffith says Ball refused to make an option contract. It is admitted Stewart asked Griffith to ascertain as to this from the Balls. Griffith says he inquired when he read that part of the contract of Thomas, and Thomas assured him it was a protection to the vendor—just as the law says is its true construction. Thomas admits there was an inquiry made of him on this point, but denies he gave the alleged assurance. His cross-examination, if it tells nothing else, shows clearly that Thomas on this point skirted the edges of the truth with Griffith and sought, according to Thomas, however, without any definite committal, to have Griffith believe it was not an option but a benefit to Griffith. On this point Thomas and Stewart, half-read lawyers, simply were not so smart as they thought themselves. This testimony was admissible.

*Thistle Mills v. Bone*, 92 Md., 50.

The evidence amply supports Griffith's testimony as to the oral understanding. The language employed in the Hinchman option (R. 325) shows Stewart knew how to state an agreement was an option when he had a party willing to make him an option. The power of attorney to Griffith moreover gave him no authority to sell an option and the presumption is appellee would exercise and appellant accept only the power given.

*Coleman v. Garrigues*, 18 Barb. (N. Y.), 60;  
*Jackson v. Badger*, 35 Minn., 62.

Stewart attempts to excuse himself on this point, as

does his attorney Thomas, by saying he did not read the power of attorney and that the agreement or deed was executed and money delivered without ever seeing the power of attorney. They were both lawyers. They knew the necessity for and scope of a power of attorney. Stewart *testifies he specially charged* Griffith that he must secure a power of attorney, and Thomas that Stewart cautioned him he had not yet seen the power of attorney. Yet they both want to be believed as against Griffith when he states he showed to Thomas a power of attorney and gave it to him, this being the short power of attorney which did not include his (Griffith's) commission. Even more, they, the next day, received the typewritten agreement and signed the same, put it away in the safe and later recorded it. Attached to it was a power of attorney, without Griffith's commission, such as Griffith says he gave Thomas. And now Thomas and Stewart, in whose custody the paper was, say, and ask credit be given them, that they never saw the power of attorney and don't know how it got of record, though they sent the paper to which it was attached and which was recorded with the power to the county clerk and paid for its recording. Thomas indeed says Roberts showed him another power of attorney with Griffith's commission the day Stewart signed the agreement, and tells a story as to how they joked about Griffith's commission. But Roberts testifies Thomas has mixed his dates and that this conversation occurred after Ball's death, when he (Roberts) brought up a court order authorizing the executor to complete the contract the decedent made. Griffith states, and Roberts corroborates him, that Griffith retained constantly the long power of attorney in which his commission was stated, that this power of attorney reposed in Griffith's safe from



the day of execution until its filing in the Register of Wills office subsequent to Alfred Ball's death.

Stewart being Griffith's principal, the contract being no option but an outright agreement of sale, and such contracts being enforceable by specific performance, we come to the inquiry whether the suit at bar is maintainable.

The suit is brought by an executor and former agent of the decedent who made the contract. The situs of the land and the contract is in Maryland. The law of that State therefore governs the interpretation and the rights.

Sec. 104, Art. 93, of the Code of Public Laws of Maryland provides: "Executors and administrators shall have full power to commence and prosecute any personal action whatever, at law or in equity, which the testator or intestate might have commenced and prosecuted, except actions of slander."

Sec. 327 of the Code of the District of Columbia is almost identical with the foregoing, and Sec. 329 of said code confers on foreign executors the same rights of suit granted local executors.

Though the action be brought in one jurisdiction, specific performance may be compelled though the land be in another jurisdiction. The reason is that the action is a personal transitory one and equity coerces the individual into paying the price and taking the land. The decree operates upon the person of the defendant.

Worthington v. Lee, 61 Md., 530;  
Hart v. Sansom, 110 U. S., 151;  
Cloud v. Greasley, 125 Ill., 313;  
Epperly v. Ferguson, 118 Iowa, 47.

The title comes from the deed executed:

Grant Coal Co. v. Clary, 59 Md., 441.

The trial court finally decreed in favor of appellant on the ground the heirs were indispensable parties and that the suit was fatally defective. In this it was in error and the Court of Appeals was right in reversing the trial court and ordering the original decree reinstated. The heirs could not as a matter of fact have been joined by appellee for reasons apparent on the face of Alfred Ball's will, and as matter of law they not only are not indispensable, but they are not even proper parties. Executor Griffith also is the proper party complainant. On any one and all of three separate and distinct grounds the executor was fully competent to make title and in his own name to bring suit :

1. Because the legal estate by the will was expressly vested in the executor, and to the exclusion of the heirs; and by the codes of both Maryland and the District of Columbia the executor is the one to sue.

2. Because by the sale of the land there was a conversion, the title to the land was in equity in the vendee and in the purchase price in the vendor. Each was a trustee of the thing actually had and possessed for the benefit of the other ultimately and equitably entitled thereto. By this conversion the estate of decedent on his death was vested with the money, and hence the personal representative and not the heirs took, while the title to the real estate was in this personal representative, the executor, as trustee for the benefit of the vendee.

3. Because by the code of Maryland the executor, having the order of the Orphans' Court, was empowered to consummate the sale, and his deed on payment of the purchase price (coerced where necessary, as in this case, by the court as in all vendors specific performance suits), conveys a valid title free from any necessity of execution

by the heirs. A court of equity can mould its decree to meet the situation. The appellee cannot by his own default impede and prevent his getting a good title. Equity if need be will coerce him into paying and remove the obstacle he creates himself in a vain attempt to befoul his own title.

**1. The Executor under the will is vested with the Legal Estate and has authority to complete Decedent's contract and convey good title without joining the heirs. By Statute he is the proper party complainant.**

Sec. 327 of the Code of the District of Columbia grants executors full power to prosecute any personal action which the testator might have prosecuted, slander excepted. This section is taken substantially from Sec. 104, Art. 93 (p. 1350), of the Code of Public Laws of Maryland. Sec. 329 of the District code confers on foreign executors the same right of suit granted local executors. Sec. 81, Art. 16, Maryland code, declares the State's testamentary law shall not affect the chancery courts jurisdiction as to trusts. Caution and safe administration of his trust, however, makes it appropriate an executor should advise the probate court granting his letters of the decedent's contracts unfulfilled at the time of decease and obtain authority therefrom to proceed. Sec. 276, Art. 93 (p. 1404) of the Maryland code requires executors to obtain an order authorizing sale from the Orphans' Court granting their letters before selling property of the decedent, but Sec. 279 declares Sec. 276 shall not apply where an executor is authorized by will to make sale without application to the Orphans' Court. Whether, strictly speaking, the executor after appointment and qualification, need consult the Probate or Orphans' Court

in a case where the will gives him such broad powers as Alfred Ball's will conferred, and where what he proposes is to make conveyance of real estate already sold by decedent in his lifetime, is a question, having in view also Sec. 282, Art. 93, of the Maryland code and also *Dent v. Maddox*, 4 Md., 523; *Montgomery v. Williamson*, 37 Md., 421, and *Brooks v. Bergner*, 83 Md., 352. But consideration of these points is unnecessary inasmuch as the Orphans' Court was applied to and expressly authorized the executor to convey.

Putting aside, therefore, for the present, the question whether the suit is maintainable because of certain Maryland code provisions, and court orders thereunder made in the case at bar, authorizing executors and administrators to carry out their decedent's lifetime-made contracts, we contend that under the will of Alfred W. Ball the appellee as executor was vested with the legal estate of the land in controversy, and that his sole deed, without the heirs, would convey a good title. This being so, of course, they are not necessary parties complainant.

Sec. 316 A. (p. 595) Poe's Supplement to Maryland Code provides:

"In all wills hereafter executed the real estate of every testator not specifically devised shall be chargeable with the payment of pecuniary legacies wherever the personal estate after the payment of debts shall prove to be insufficient, unless the contrary intention shall clearly appear."

Ball's estate was manifestly insufficient unless the land in controversy be considered as converted into money, consisting as shown by the record of title: *John S. Ball* personality and charged with more than \$1000.

The will of Alfred Ball confers on Executor Griffith "full and complete power and authority over my entire estate, real, personal and mixed," and empowered him "to sell my real estate of which I may die seized and possessed" \* \* \* "at public sale after one month's notice." It then made certain specific bequests to be paid as far as possible out of the personal estate, including one of \$2,000 to the church, but if the personalty be insufficient the deficit was to be made up out of the realty. Ball died seized and possessed of no real estate except the Jim Ball farm, having, as seen already, sold the land in controversy. Wills are interpreted according to popular import and not technical rules.

Phelps v. Harris, 101 U. S., 370;  
Bank v. Beverly, 10 Pet. (U. S.), 532.

The will vests the executor with full and complete power and authority over the entire estate, realty and personalty. Thereby it necessarily confers on the executor the legal estate. The power conferred is inconsistent with a legal estate in the heirs. How can he have full and complete power and authority if he can exercise the same only by consent and concurrence of the heirs? The limitation that if he sells the real estate it shall be by public sale (which was a matter that troubled the trial judge) is not applicable here, where we have a sale already effected, ~~ride~~ the argument that an absolute sale and not an option resulted, and what remains is payment of the balance of the purchase price execution of a conveyance. The obvious reason for a public sale was to insure a fair market price for the property, to protect the estate. That price the decedent in the case in controversy had obtained antecedent to the making of his will. The reason for the

limitation not existing, the limitation itself has no relation to the realty in controversy but to land not here involved, namely, that derived from Jim Ball, who died prior to making of the will. The limitation is not one on the legal estate or on the power of disposition of the legal estate or on the mode of or parties to conveyance but on the manner of putting on sale. The fee is in the executor by force of the terms of the will.

“Where an executor is empowered to sell lands he takes the fee simple.”

Algers Case, 78 Fed. Rep., 729;  
Hanson v. Brewer, 78 Maine, 177;  
White v. Cowing, 6 Hill, 336;  
Sandford v. Handy, 23 Wend., 260;  
Kidwell v. Brummagen, 32 Calif., 437;  
Miller v. Meetch, 8 Penna. St., 418.

The trusts and powers reposed in and conferred on the executor require vesting in him of the legal estate. In *Rathbone v. Hamilton*, 4 App. D. C., 475, that court held that by implication alone the legal estate was vested in the executor where the will directed that the real and personal estate be sold and the proceeds distributed in a certain manner. A comparison of the two wills shows how little room there is for a contention if that authority be deemed by this court as we think it will be, a correct exposition of the law, that in the case at bar the executor is not vested with full and ample rights and power of both action and conveyance.

“Executors or trustees take an estate commensurate with the exigencies of their trust. Where powers given under a will require the executor to

have the legal estate the will must be held to invest him with it."

Neilson v. Lagow, 12 How., 98-111;  
 Webster v. Cooper, 14 How., 499;  
 Doe v. Considine, 6 Wall., 471;  
 Johns Hopkins Univ. v. Middleton, 76 Md.,  
 188;  
 Franklin v. Osgood, 2 Johns, Ch. 20.

Furthermore, and quite independently, under the terms of the will, Dr. Griffith was residuary devisee for the purposes of distribution of the estate and unites in his own person the right to sue as executor by force of the statute, and the same is true of him as residuary devisee. The testator could have sued, and Griffith is in privity of estate with him by representation and also by title. What he is doing is enforcing an old contract—not making a new one.

The late Chief Justice Alvey of Maryland, in *Worthington v. Lee*, 61 Md., 530, thus put the legal principle: "Wherever the specific execution of a contract or covenant respecting lands would have been decreed as between the original parties, it will be decreed as between all persons claiming under them in privity of estate, or of representation, or of title." By both representation and title appellant is in privity with Ball.

See also *Mundorf v. Kilbourn*, 4 Md., 463.

By the will the real estate as well as personalty being charged with payment of debts, the administrator or executor was the proper party.

*Thompson v. Duncan*, 1 Tex., 487.



It is well settled upon general principles as well as by our statute that in an action for the specific performance of a contract made by the testator for the conveyance of land it is not necessary that the heirs should be made parties in order to bind them.

Shannon v. Taylor, 16 Tex., 413.

Execution of the contract with partial payment was a transfer in equity of the title, and by the terms of the will this title was vested in the executor.

Bissell v. Heyward, 96 U. S., 580;  
Smith v. Wyckoff, 11 Paige (N. Y.), 50.

By the sale effected there was a conversion. Thereafter Ball held as Trustee of the land for Stewart. Ball's interest became personalty or a chose in action and passed to his Executor, who took title to carry out the trust.

The agreement made between Ball and Stewart was not an option but an absolute sale. The \$500 paid down was, as the agreement recorded expressly stated, a part of the purchase price. The retention of possession by Ball thereafter was but as security for the payment of the balance of one-half of the purchase price and pending title examination, survey, etc. By the sale the land became appellee's and the purchase price Ball's. In equity there was a conversion of the land into money, and the fund to be derived as a result of the sale passed to the personal representatives and not to the heirs. Hence the heirs were neither indispensable nor proper parties.

Smith v. Ayer, 101 U. S., 326.

The effect of the sale made by Ball was that thereafter

in equity Ball held the land as trustee for Stewart, and Stewart the consideration money as trustee for Ball. If the contract were performed then the price paid went to the executor as personal property, and if not, the executor acquired a chose in action. The broken contract was an agreement mutually obligatory, and Stewart was as much bound to pay over the purchase price to the personal representative of the vendor as, if the purchase price had been paid, the personal representative of the vendor would have been bound to turn over the legal title to the land to the vendee for whom vendor and his personal representative were but trustees.

"The executor becomes vested with the title to all corporeal personal property or things in possession and visible and tangible, and also with the title to incorporeal property or things in action."

Hickox v. Frank, 102 Ills., 660;

Hitchcock v. Mosher, 106 Mo., 578.

"The vendor's interest ceases to be real estate. It becomes a chose in action, a personal demand for the consideration money, which in case of death goes to his personal representative, and the legal title is held only as a security for the payment of the debt. The vendee becomes in substance the owner of the estate. This conversion takes place notwithstanding that it may be defeated afterwards by the non-payment of the purchase money."

Longwell v. Bentley, 23 Penna., 99.

"By contract of sale of land the estate of decedent is converted into personalty, over which the personal representatives have absolute control."

*In re Simmons Estate*, 140 Pa., 567;  
*Dent v. Maddox*, 4 Md., 53.

"The administrator and not the heirs of a deceased vendor of land is the proper person to bring suit for the unpaid purchase money."

*Rachford v. Rachford*, 13 S. W. Reps., 1075;  
*West Hickory M. A. v. Reed*, 80 Pa., 38.

In an action for the specific performance of a contract made by the testator for the conveyance of land it is not necessary for the heirs to be made parties in order to bind them. For the purposes of such a suit the executor is the representative of the heirs.

*Holt v. Clemmons*, 3 Tex., 423;  
*Ottenhouse v. Burleson's Adms.*, 11 Tex., 87.

The foregoing cases came up under Texas statutes, but they are not essentially different from those of Maryland.

In *Lewis v. Hawkins*, 23 Wall., 126, the Supreme Court held that where an agreement is made to sell land the vendor holds the legal title as trustee for the vendee and the vendee is a trustee for the vendor as to the purchase money. The equitable estate of the vendee is alienable, descendible and devisable in like manner as real estate held by a legal title. The securities for the purchase money are personalty and in the event of the vendor's death go to his personal representatives.

In the instant case appellee is seeking to compel appellant to pay the balance of the purchase price agreed, give a mortgage for the remainder and take the land as per the deed or contract recorded by appellant.

In *Meeks v. Olpherts*, 100 U. S., 566, it was held the administrator was the representative of the rights of the heirs and creditors of the estate, and had the same right to sue as the intestate and had the exclusive right and duty. In that case a statute also existed, but was substantially the same as the Maryland and District statutes, and the reasoning of that case is equally applicable to the case at bar.

In *Currie v. Boyer*, 5 Beavans, 8, the English Court of Chancery held that where a person had contracted to sell his estate and died that there was a conversion, that in equity she had alienated the land and had acquired a title to the purchase money. The heirs-at-law were held not entitled to the estate.

See also *Tye v. Tye*, 88 Mo. App., 330;  
*Suttee's Heirs v. Ling*, 25 Pa., 466;  
*Krause's Appeal*, 162 Pa., 18-25.

By the Code of Maryland the Executor under the Orphans' Court orders can complete the Testator's contract. The heirs are not necessary, the will being admitted. Appellee, by his default, cannot defeat his own contract and his own title. Equity will mould its decree, protect all parties and specifically enforce the contract.

Sec. 81, Art. 93, Code of Maryland, provides: "The executor or administrator including the administrator *de bonis non* of a person who shall have made sale of real estate and have died before receiving the purchase money or conveying the same may convey the said real estate to the purchaser and his deed shall be good and valid in law and shall convey all the right, title, claim and interest of such deceased person in such real estate as effectually as

the deed of the party so dying would have conveyed the same; provided the executor or administrator of the person so dying shall satisfy the Orphans' Court granting him administration that the purchaser has paid the full amount of the purchase money."

Sec. 282 of the same article specifically declares ratification by the Orphans' Court unnecessary "in any case where a court of equity of competent jurisdiction has assumed jurisdiction in relation to the sale of any such real estate."

*Montgomery v. Williamson*, 37 Md., 421, states the object of the power of ratification conferred on probate courts to be protection of the estate and prevention of fraud and collusion. Hence, while proper and convenient and a saving of time and expense where parties are willing to have a decedent's lifetime-made contracts carried through and title perfected in the Orphans' Court, it is not necessary and essential to do so where a court of equity, with its broader powers, takes command of the situation and protects the estate. Appellee Stewart, had he so desired, could have procured a perfect title to the land in controversy by the simple process of paying the money as he had contracted to do. No joinder of heirs concededly was necessary to the probate court's proceeding.

But, as he refused to perform his agreement, though the Probate Court in advance had passed its approval or confirmatory order, an adversary proceeding became necessary and this necessarily was brought in an equity court. The contention of appellee is that inasmuch as he refused to complete his contract he cannot be compelled to do so because by his refusal he can prevent his own acquisition of a good title, inasmuch as the land is in

Maryland and because, as he claims, the heirs must be parties to any deed and any litigation. In other words, that he can cloud his own title and by the cloud he raises destroy his own contract; that he can create a bogey and when he assumes to be frightened at it the court of equity likewise will take fright and release him from his contract; that by refusing to pay over the money he can prevent the condition precedent which would enable the executor to deliver title through the Orphans Court, and that if it be sought to compel him the executor cannot act, but the heirs are indispensable to the proceedings. That is to say, if the contract should be one advantageous and extremely profitable to the vendee, and there were a complaisant executor, the deal could be put through; but if it were profitable to the estate, and there is a reluctant vendee and an honest determined executor, it cannot be. The contention obviously ought not to prevail if it can be avoided, and aside from the two special and independent reasons of the power granted by Ball's will and of the doctrine of conversion it can be in this case for a third and equally independent reason by virtue of the statute and of the powers of a court of equity. That court always has power so to mould its decrees as to provide relief and remedy for a right.

While unnecessary in this case, the equity court could require the purchase price to be paid into court to the executor's order (*Gale v. Best's Excr.*, 16 Wis.), and then an order obtained from the Orphans' Court of Prince George County and a deed executed before payment over of the money from the court registry, though the Orphans' Court order heretofore passed is a virtual confirmation (*Livingston v. Cochran*, 33 Ark., 294).

Jurisdiction existed in the Orphans' Court to pass the

orders, inasmuch as the county was the situs of the land and domicile of the decedent. Therefore, its orders are entitled to faith and credit and a presumption of their validity.

Lloyd v. Waller, 74 Fed., 601;  
Schlee v. Darrow, 65 Mich., 362;  
Hawkins v. Hawkins, 28 Ind., 71.

Equity acts compulsory. Specific performance in its very essence is compulsory. It acts on the person and compels performance, payment of money or conveyance of property. A court of equity can compel appellee to pay the agreed purchase price. The jurisdiction of the Orphans Court is not exclusively of equity's. It is merely a simple forum for a simple matter. The requirement the moneys first must be paid is intended simply for protection of the estate. When equity compels payment and the transaction is completed under its direction the end sought is attained.

Equity can decree conveyance and enforce payment and then, the title being vested in appellant, there will be a good fee simple title in appellee.

Muller v. Dow, 94 U. S., 444;  
Corbett v. Nutt, 10 Wall., 464.

And even though land be in another state, Orr v. Irwin, 4 N. C., 351.

"The legislature in granting jurisdiction over real estate of decedents to orphans' court did not make such jurisdiction exclusive, but has expressly reserved the jurisdiction in equity. It was the design of the legislature to save, in ordinary cases



the expense and delay incident to chancery proceedings, but not to take away jurisdiction in equity where parties choose to invoke it."

Keplinger v. McCubbin, 58 Md., 206-13.

Had the testator lived he could have compelled the specific performance and by Sec. 104, Maryland code, and Sec. 327, District code, the executor may prosecute any personal action the testator could have, save slander, and specific performance is a personal action. Had the will been contested and a suit been necessary pending the end of the will controversy, the heirs and the executor perhaps might have been indispensable parties, but this would have been because of uncertainty as to the legal representatives. (See Spier v. Robinson, 9 How. Pr., 325.)

A case similar to that at bar is Hyde v. Heller, 10 Wash., 586-611. Caroline Heller *et vir* sold to Hyde *et al.* at a boom price certain land near Spokane, and before fulfilment of the contract and passage of a deed Caroline died. The boom having flattened, the executors sued for specific performance. Held, that the legal title to decedent's lands had vested in the executors for the purpose of passing title to her vendees under the contract of sale, that the rights of devisees or heirs in the land was confined to an interest in the purchase money due under the contract, that the executor's deed would pass a good title and that an offer to make a deed by the executor or a court commissioner constituted a sufficient tender of a deed. In the course of its elaborate opinion, the court said:

"All the right that Mrs. Heller had in this land after she had entered into the contract of sale was

the right to the money which represented the purchase price. . . . Her heirs under her will must take just what she had a right to devise and nothing more, and she had a right to devise what she had and nothing more. . . . It is a patent fact (speaking of the State statute, similar generally to that of Maryland) that the central idea is the enforcement of contracts according to their terms, and that the administrator is made the legal representative of the deceased to convey title. . . . And if the title vests in the administrator for the purpose of complying with the contract, it must necessarily vest there for the purpose of answering to the demands of a court of equity to convey in an action brought for the express purpose of enforcing the specific contract. . . . In fact it seems to us that a consideration of all the different provisions of the statute irresistibly forces the conclusion that the legal title vests in the administrator for the purpose of passing the title to purchasers in conformity at least with the conditions of contracts made by the testator."

In a case in Pennsylvania, *In re Huggins Estate*, 204 Penna., 167, one Huggins sold mineral rights under her land and died. Her executors sued for specific performance. The contract had required all the money to be paid before the deed should pass. The vendees alleged willingness to pay but set forth one Debbre West claimed the agreement of sale as a gift from decedent. Held: Taking all these facts as true, it leaves the equitable title in the vendees and the equitable title to the unpaid purchase money in Debbre West. The executors (p. 175) should be required to make a deed now and place it in escrow in Debbre West's hands to be delivered by her when the purchase money was paid.

In *Weed v. Peck*, 38 Conn., 88, B covenanted with A to

execute and deliver a good deed to land on or before a certain date and A to do the same as to another piece and \$300 bonus. B died without performance or tender by either party. Held: That the agreement was binding on B's personal representatives. The court said literal performance of the contract had become impossible, but that *the substance was the sale and exchange of land and the manner merely incidental*. The administratrix may obtain from the court "authority to convey the estate and a conveyance under such authority will as effectually vest the estate in the plaintiff as the deed of Mr. Peck would have done had he continued to live."

See also *Miller's Admr. v. Miller*, 25 N. J. Eq., 354;

*Fulwider v. Peterkin*, 2 Greene (Iowa), 522;

*Bryant v. Atlantic R. Co.*, 119 Ga., 608;  
*West Hickory Min. Asso. v. Reed*, 80 Penna., 38;

*In re Simmons Estate*, 140 Penna., 567;

*Spier v. Robinson*, 9 How. P., 325;

*Robinson v. Appleton*, 124 Ill., 276;

*Newton v. Swazey*, 8 N. H., 9;

*Butler v. Rockwell*, 14 Colo., 125.

When the action is for money alone the heirs are not necessary.

*Perry v. Roberts*, 23 Md., 222.

*Fry on Spec. Perf.*, p. 88.

As to the mere mechanics of paying the money over and getting the court order and deed, no real difficulty arises. Had appellant desired to keep his agreement (and the court has decided all questions as to his duty in this

regard in appellee Griffith's favor), all appellant had to do was to come into court and proffer the money in open court. Then appellee could have simultaneously applied for authority to turn the deed over to him, and the court's passing the order, transfer of the deed would have followed. Refusing to perform his part of the dependent conditions of the contract appellant cannot make his own breach of his contract a ground of objection. He cannot pretend to take fright at men of straw and expect equity to become panic stricken on his false alarm that a good title is endangered. Appellant having refused to perform, a court of equity, acting compulsorily, will compel specific performance and so mould the decree that appellant while compelled to keep the terms of the bargain, will be assured of his deed. Once the purchase price is compelled by the court and the executor's deed delivered, all is complete. The executor's deed is the title (*Grand Coal Co. v. Clary*, 59 Md.). The appellant then has the land and title and appellee the money—precisely as was contracted.

*Appellant grounds his objection on the point the Orphans' Court cannot order the deed passed by the executor till appellant pays the purchase price, that this is a condition precedent; that he, appellant, refuses to pay the purchase price and create the condition precedent.* This, in effect, appellee having a contract otherwise entitling him to specific performance, is to say in substance appellee *has a right but has no remedy*. The contention we submit is but sticking in the bark—*hæret in cortice*.

The principles announced are entirely consistent with *Grant Coal Co. v. Clary*, 59 Md., 441, on which we understand appellant relies so far as concerns our point

as to the effect of the Maryland statutes and the orders of the Orphans' Court, the arguments as to the powers conferred by the will and as to conversion being wholly independent. A careful examination of that case will show it makes for and not against appellee when applied to the record here. The one point before the court in that case was the validity as making title and as conclusive of rights of heirs of an order of the Orphans' Court where *no deed* had been executed, the order did not recite the purchase price had been paid and the petition and answers on which the order was founded were lost. The one point before the court it decided by holding the Orphans' Court was of limited jurisdiction, that proof of payment of the purchase price was a condition to its (the Orphans' Court) approving a decedent's contract, and that the title of the purchaser was derived from the deed of the executor. Appellee admits the Maryland Orphans' Court is as to some matters of limited jurisdiction and has not been clothed as in some States with jurisdiction in adversary proceedings and that it is only in amicable proceedings where the money has been paid over that it can enforce a decedent's contracts. But that does not mean an equity court cannot take jurisdiction, cannot decree the money shall be paid and the executor's deed delivered, and that the Orphans' Court cannot authorize the contract to be completed conditioned on payment of the purchase price. The jurisdiction conferred on the Orphans' Court took away none of equity's jurisdiction (*Keplinger v. McCubbin*, 58 Md., 206-13). The executor represents all parties in interest, *vide*, severally and separately, the will, the conversion, the statute and *Dent v. Maddox*, 4 Md., 523. The object of grant of power to the Orphans' Court was pro-

tection of the estate (*Montgomery v. Williamson*, 37 Md., 421), and that object equity can and will secure where it tries suit for specific performance.

Title made by equity's decree in this case will be complete and unimpeachable. It will be predicated on a decree of a court of competent jurisdiction, having service on the defendant in a personal action, at the suit of a party authorized by law to sue and vested by the will, the doctrine of conversion and the statute, each and all, with the right to sue, and on deed delivered after payment of the purchase price. *Grant Coal Co. v. Clary*, page 445, expressly states the Orphans' Court order might have furnished ground for suit in equity to compel deed from the executor.

**The record shows a good, clean fee simple title. A warranty deed even tendered where none was required. No title defect and no defect in survey is shown by appellant on whom rested the burden of proof. Adverse possession alone would have been sufficient.**

The agreement sought to be ordered specifically performed provided for a title search by J. K. Roberts and survey by W. J. Latimer. Both have been made. No defect is shown to exist. Imaginary possibilities or suspicions on the part of appellant cannot avail to prevent fulfillment of his contract. The best evidence no real objection to the title is entertained by appellant is that Roberts' title search with his abstract of title remained in appellant's possession from June until after Ball's death in November without any suggestion of imperfection or objection.

Appellee might rely on Roberts' report as conclusive (*Allen v. Pockwitz*, 103 Calif., 85). But if not conclusive, his report that the title is good certainly can be

impeached only for fraud or mistake, and the burden of showing either is on appellant, who has not sustained the burden. The same is true of the survey.

Appellant contended in the court below and may do so here the abstract of title is defective in not going back to the lord proprietary. By Sec. 76, Art. 75, Maryland code, a patent to land is presumed in favor of a party showing a title otherwise good. Roberts went back to 1792, as the record shows, and then picked up the title as it appeared to the several pieces, the abstract showing no part to start later than 1846, and that last part it is not shown has any record in Prince George County between 1792 and 1846. Counsel for appellee is informed there are no records in the county earlier than 1792. The land is situated in Maryland and in that State specific performance will be decreed on title by adverse possession (*Erdman v. Corse*, 87 Md., 506; *Allen v. Van Bibber*, 89 Md., 434, and the very recent case of *Regents v. Calvary Church*, 104 Md., 636). The record shows Alfred Ball had exclusive unquestioned possession of the land in controversy since his father, Henry T. Ball's death in 1877, and that Henry T. Ball had a similar possession of many years before his death. The only possible objection to the title was removed when by affidavit it was shown Elinor, wife of Henry T. Ball, predeceased him. A fanciful objection was asserted as to the Cecil deed and a claim made it does not show there were not alive other parties who should have joined in it. The Cecil deed was one of confirmation, and there is no evidence there were any other parties alive who should have joined in it. If appellant claims there were such he must prove it. Only one objection



with any possibility of merit was found by Roberts when appellee's lawyer set forth objections in December, when appellee was playing for delay, and this possibility was removed by the affidavits of Fowler and Suit, dated January 14, 1904 (Trans., p. 29) that Elinor Ball, wife of Henry T. Ball, had been dead more than thirty years.

Martindale on Abstracts of Title, Sec. 17 *et seq.*, says:

"In the older states it is sometimes impracticable to date the abstract from the original patent. In such cases it is usual to require the title to be shown for a period of forty years at least. . . . The discretion ought to be exercised by the abstractor not to disclose the title by the abstract beyond the ordinary rules of practice. It is presumed that in all ordinary cases a title for forty years would be accepted as marketable in any of the states."

See also *Sevenson v. Polk*, 71 Iowa, 278.

In the instant case we have an adverse possession proven of more than sixty years and a record title of a century (the limit of records in the county), free from any proven defect or defect apparent on its face. We submit therefore that as Roberts has gone back as far as the county records run, 1792, as he was in the employ of both parties, as his abstract remained unobjected to during the entire period named in the sale agreement for completion of the contract, and never till hearing of the cause because it did not go back to the lord proprietary, and as a good possessory and record title is shown, with moreover an offer of a warranty deed, that objections to the title are frivolous and simply the ingeniousness of an unwilling purchaser.

A vendee of real estate who refuses to take title on the ground of defects must point out the objections and give proof.

*Greenblatt v. Hermann*, 144 N. Y., 13.

Objections must be substantial and reasonable. The court will not consider immaterial defects, technical objections and bare possibilities.

*First A. M. E. Soc. v. Brown*, 147 Mass., 296;  
*Hayes v. Harmony Grove Cem.*, 108 Mass., 400;  
*Foley v. Crow*, 37 Md., 60;  
*Weems v. Brewer*, 2 H. & G. (Md.), 290;  
*Hepburn v. Auld*, 5 Cranch (U. S.), 262;  
*Riggs v. Pursell*, 66 N. Y., 193;  
*Hellreagel v. Manning*, 97 N. Y., 60.

Appellant has further objected that the land sold was not described with sufficient certainty. The evidence fails to disclose the slightest difficulty of identification. The surveyor, the title examiner and lifelong residents all had not the slightest difficulty on this score.

A practical location of the premises intended is sufficient to give the requisite definitions and it will be sufficient if the property intended to be conveyed can be identified by evidence properly admissible.

*Kraft v. Egan*, 76 Md., 243;  
*Hamilton v. Harvey*, 121 Ill., 469;  
*Fowler v. Fowler*, 204 Ill., 82.

As to objections to the survey such as were raised below and may be renewed and hence will be noticed by appellee's counsel, no evidence whatsoever has been introduced even tending to impeach its accuracy. The sur-

veyor was mutually agreed on, is shown to have been competent, no allegation of fraud is made against him and his report and findings, if not conclusive, certainly are entitled to every presumption in their favor and the survey must be accepted in the absence of anything in evidence contradicting it. Appellant has claimed the acreage shown by the survey and the deeds do not correspond. This would be no valid objection if true, and it is not. One of the deeds is silent as to the acreage, and it does not appear others stated the acreage as the result of a survey.

In *Jackson v. Barringer*, 15 Johns (N. Y.), 742, the property leased was "the farm whereon Jacobus J. Decker now lives," containing 80 acres. It in fact contained 149 acres. Held, the surplus went with the lease. "It is a well-known rule that when a piece of land is conveyed by metes and bounds, or *any other certain description*, this will control the quantity although not correctly stated in the deed." It was, said the court, described as the farm whereon Jacobus J. Decker now lives and it was reasonably and fairly to be presumed that this possession was known to both parties and that it was the farm as an entirety that was intended.

The objection the farm contained 288 acres instead of 240 acres affords no ground for refusing specific performance. The sale agreement describes the land as 240 acres more or less, it identifies the tract as the Ball farm whereon Alfred Ball now lives and inherited from Henry T. Ball, appellee's testimony shows appellant was advised Alfred Ball claimed there were nearer 275 acres in the tract than 240 acres as shown by the tax assessment books (with which records, it is apparent from the testimony appellant was familiar), that the parties agreed on a survey as the means of determining the acreage, and that appellant wanted the entire tract, even to the burial

plot of one acre. Thus a much stronger case than Jackson *vs.* Barringer *supra* is shown.

See also Goodenow v. Curtis, 18 Mich., 298;  
 Kraft v. Egan, 76 Md., 243;  
 Robeson v. Hornbaker, 3 N. J. Eq., 60;  
 Mansfield v. Hodgdon, 147 Mass., 304;  
 Barry v. Coombe, 1 Peters, 640;  
 Preston v. Preston, 95 U. S., 200;  
 Triebert v. Burgess, 11 Md., 463;  
 Dewey v. Spring Valley Co., 98 Wis., 83.  
 Algers Case, 78 Fed. Rep., 729.

**Time not a bar to specific performance. Moreover, the delay here originally was due to appellant and subsequently to death.**

The delay shown in the case at bar is no valid objection to specific performance. The appellant himself, as the record shows, requested the survey should be delayed until after November 7, the date set for payment of the remainder of one-half of the purchase price. He therefore cannot defend because of the delay (*Brown v. Slee*, 103 U. S., 828). The death of Ball necessarily occasioned delay, but appellant primarily was responsible for the delay, and subsequently his frivolous objections to the title in an effort to gain time to shape his course according to developments at the well, occasioned still further delay. There is no evidence of any delay for which appellee is responsible legally, or which should appeal to the court in the exercise of its judicial discretion—nothing of delay brought about by appellee for purposes of profiting by the added time. Indeed, the record shows unusual energy and effort by appellee to close the deal. Furthermore time was not of the essence of the contract. For strong cases on this point see:

Hosmer v. Wyoming Ry. Co., 129 Fed. Rep., 883;

Penna. Min. Co. v. Martin, 210 Pa., 56;

Wilson v. Herbert, 76 Md., 489;

Watts v. Kellar, 56 Fed., 1.

Fortuitous delay by vendor is no bar to specific performance to compel vendee to take the land.

Woodson's Admr. v. Scott, 1 Dana (Ky.), 471.

Four months' delay is not sufficient to prevent a decree for specific performance.

Wooding v. Crain, 10 Washington, 38-9;

Faulkner v. Williman, 16 S. W., 352.

Six months' delay under the circumstances not a bar.

Lawson v. Mullinix, 104 Md., 156.

The record shows appellee notified appellant of his readiness to perform and the evasion of performance by appellant. The conditions were concurrent and it was upon appellant as well as appellee to proceed with performance.

Cole v. Killam, 187 Mass., 213.

The objection on the score of the alleged difference between actual value and the purchase price of the land is wholly untenable. This evidence was inadmissible. There is no claim of false representations, or imposition, or fraud, on the part of appellee or of Ball. Appellant was entirely competent to contract, opened the negotiations himself, and paid the price named without any deception

practised against him. At the time the agreement was made the land was valuable because of the oil excitement. Had oil been discovered the land would have brought hundreds and possibly thousands of dollars per acre and at any time during November and December when boring was still in progress the land was saleable at a price based on the possible existence of oil whereas with oil drilling closed and a dry hole conceded the land was much less saleable or valuable in January and February.

Mere inadequacy of consideration, the contract being free from imposition, will not defeat a decree of specific performance.

Cathcart v. Robinson, 5 Pet. (U. S.), 264;  
 Shepherd v. Bevin, 9 Gill (Md.), 32;  
 Young v. Fort, 5 Gill, 287;  
 Erwin v. Parham, 12 How. (U. S.), 197;  
 Md. Clay P. Co. v. Simper, 96 Md., 5.

Moreover, wherever adequacy of price is an element in specific performance the adequacy is that at the time the contract was made.

Morrill v. Everson, 77 Calif., 114.

The claim the contract was abrogated by act of appellee or that appellee acquiesced in relief of appellant from its terms is equally untenable. The letter of appellee calling on appellant to complete the contract by the middle of November was not a termination or tantamount to a termination of the contract. It was an attempt to hurry appellant and to be able to lay matters before the Orphans' Court. But, even had it in terms declared the agreement off, it could not have had such effect. The will had not yet been probated. Griffith's authority as

agent of Ball had ceased and there was as yet no executor of the estate. At this time the contract was in abeyance pending the Probate Court's action on the will. The duty of the executor was as he was informed by Roberts, the attorney for both parties, whom he consulted when other parties came to him regarding the property in November when reports that oil would be struck were current, to lay the matter before the court and act under its orders. The appellee could not at that time have renounced any right of the estate. Ball's estate was bound by the contract and mutuality requires that appellant likewise shall be. Moreover, the record shows that appellant did not treat the contract as ended, but that in November and also in December he continued negotiations with appellee regarding the estate. Appellant still had hopes of striking oil and amassing a fortune out of the Ball land. Boring for oil was in progress clear into January and, as appellant admits, he was up in the air with hope one day and down in the depths of despair the next.

McKie v. Howland, 3 App. D. C., 478.

The testimony of Ambrose, Griffith and Roberts shows clearly that appellant was not, even as late as December, willing to adopt a decisive attitude with reference to his claims or rights under the contract or deed recorded in Ball's lifetime. He was not prepared then to live up to his contract nor yet to forfeit, if he had any such right, his \$500 of down payment and end the matter. He was fighting for delay and suggesting points of doubt respecting the title that, as Ambrose testifies, necessarily involved delays and which alleged doubts as the record



evidences were but subterfuges. The title abstract had been delivered to Stewart and was in the custody of Stewart or his attorney Thomas from June 11 and yet no objection to the title was made until subsequent to the date set for payment of the balance of one half of the agreed purchase price and execution of a mortgage for the remainder. In all the dealings Thomas had acted as attorney for Stewart, at least so far as Griffith knew, and was designated as Stewart's attorney in the original letter from Stewart to Griffith. It is claimed that in the negotiations subsequent to Ball's death he acted as the oil company's secretary or attorney and that any prolongation of negotiations was by the oil company and not Stewart. Thomas himself concedes he had no authority to bind the company. The claim that it was the broken down oil company that should be made to respond and not appellant Stewart is a familiar one in the case. It was made by Stewart in his answer when he claimed the oil company as principal had been disclosed to Griffith. When confronted with his personal letter introducing Thomas to Griffith as "my (Stewart's) attorney" Stewart attempted to wiggle out of the situation by claiming the letter to be a hurriedly prepraed and carelessly signed writing and Thomas attempted to help Stewart out as to the oil company by saying on leaving he had made a parting reference to his oil company connection, but it was perfectly patent to the court Griffith did not know and it was not intended he should know he was dealing with any oil company but should be made to believe it was Stewart's personal deal. The small credence due to appellant was made apparent when appellant's witness Baughmann on cross-examination admitted the letter from Stewart introducing Thomas to Griffith had

been carefully prepared and discussed between all the oil promoters before Stewart signed it and that it was prepared to deceive. Ambrose and Griffith swear positively that in the prolonged negotiations in December they dealt with Stewart personally and nothing was said to the effect that Stewart was not the party contracting but the oil company; they testified they did not then hear of the oil company. Stewart indeed goes so far as to claim to deny having taken any part in the prolonged negotiations and that he informed Ambrose and Griffith he wanted to be satisfied as to the title and then would complete and perform his agreement. On this point we submit Ambrose and Griffith are to be believed and not appellant. Two courts have passed on these points and each decided the conflict of testimony on the whole record in favor of appellee.

This court, there being evidence to support the view of the lower courts on the facts and the conclusion reached not being manifestly wrong, will not reach a different conclusion as to a matter of fact.

Cliff v. U. S., 195 U. S., 159;

De La Rama v. De La Rama, 201 U. S., 303.

The testimony of Mr. Ambrose and of appellee, and even the evasive testimony of appellant's attorney Thomas, shows appellant was prolonging the negotiations with a view to insisting the land was his if oil were struck and that appellee from the moment of his appointment as executor was energetic, steadfast and diligent in his insistence that the decedent's contract should be carried out by appellant.

**The Contention Appellee is not Shown by Evidence to be Executor is Raised for the First Time in this Court and is Without Merit. It is a Final Attempt to Catch a Straw and Avoid Performance.**

In the brief filed in this court the new counsel for appellant make a contention for the first time that the two lower courts erred for the reason that there is no proof appellee is executor. We respectfully submit the contention cannot as matter of law be sustained and be raised here for the first time and that as matter of fact the record abundantly proves that appellee is the executor and that that matter never was in dispute.

Complainant's exhibit A 3, record 13, which was duly offered in evidence letter, shows the appointment of Griffith as Alfred Ball's executor and Exhibit A 4, page 15, sets forth not only the appointment but the qualification of Griffith as executor, and there is the order of court authorizing him as executor to complete the sale made by Ball in his lifetime. Griffith testified without objection that he was executor and in his cross-examination he was asked by appellant's counsel to state, and later did state, the money which had come into his hands as executor of Alfred Ball's estate from the personalty of said estate. Elsewhere through the record are other proofs of executorship, including the abstract of title prepared by Roberts in December at appellant's request and to which no objection was made by appellant on the score Griffith was not executor as set forth therein. There is no exclusive mode, by statute or otherwise, of proving *the fact* a party is executor.

Appellant did not, as asserted in appellant's latest

brief, by his answer put in issue the office of appellee Griffith as executor. He did, as the answer, page 39, shows say he was advised appellee had no right as executor to bring or maintain suit against appellant. But this is quite different from specific assertion that appellee was not executor.

Sec. 1535 of the Code of the District of Columbia provides: "If either party wishes to deny the right of any other party to claim as executor, or as trustee, or in other representative capacity, or as a corporation, he shall deny the same specially under oath, unless for cause shown he obtain leave of the court to make such denial without oath."

Appellant's duty in any event would have been to have objected to secondary evidence that appellee was executor,

U. S. v. Moreno, 1 Wall., 400;  
Pennock v. Dialogue, 2 Pet., 1.

and to have raised any points of evidence as to matters that could have been cured by more formality of proof at the time evidence was offered which appellant considered not strict proof.

Patrick v. Graham, 132 U. S., 627;  
D. C. v. Woodbury, 136 U. S., 450.

The point, as stated, has no merit in fact and in law could not be here raised for the first time.

The labored attempt of appellant to impeach the proceedings of the Probate Court of Maryland under whose authority Griffith acted as executor is vain. It is true the Probate or Orphans' Courts of Maryland have limited

jurisdiction but this jurisdiction as to probate of wills and the grant of letters of administration has been absolute in Maryland since 1798; see Art. 93, Maryland Code, Secs. 40 and 331. The Orphans' Courts of Maryland moreover are provided for in the state constitution and have full powers wherever their jurisdiction extend. The Maryland courts have decided frequently that the facts upon which this jurisdiction is based cannot be inquired into in any collateral proceeding.

See *Raborg v. Hammond*, 2 Harris & Gill, 42;  
*Wilson v. Ireland*, 4 Md., 448;  
*Stanley v. Safe Dep. Co.*, 87 Md., 453.

The case of *Emmart v. Stouffer*, 64 Md., cited by appellant so far as the instant case is concerned is thus disposed of in the opinion of Chief Justice McSherry in the *Stanley* case last cited:

"If it had a right to decide the question of residence, then it had the right to determine whether it had jurisdiction to admit the will to probate, and if it decided that preliminary question erroneously its decision was subject to review on appeal or to reversal by the court itself upon proper application made to it for that purpose in due season. *Raborg v. Hammond*, 2 Har. & G., 48; *Schultz v. Houck, etc.*, 29 Md., 26. The evidence upon which it based its decision could not be looked to by this court (even if it were in the record) to determine whether the Orphans' Court correctly decided the question of residence, except upon an appeal from that decision, and there is no such appeal before us. The subject being within the court's jurisdiction all acts done as consequence of and pursuant to its decision on a matter of fact that gave it the right to exercise that juris-

diction, are valid until reversed on appeal or set aside by its own order, even though it should subsequently appear that the conclusion reached on that matter of fact was not actually warranted. *Wilson, Admr. v. Ireland*, 4 Md., 448."

In conclusion, we desire to direct the court's attention to the fact that if the terms of the decree originally signed by the court in this case in appellee's favor be executed that the contract will be enforced according to its terms and each and every person interested will get precisely what he or she should under the contract and the will. To avert this result appellant has endeavored to cloud his own title, to deny his own contracts and to endeavor to raise clouds of suspicion that may serve for a claim this is not a case for the exercise of judicial discretion by compelling specific performance. We submit that specific performance where a contract has been fairly made, is a matter of right and that unproven allegations of fact and unfounded claims as to the law constitute no bar.

Respectfully submitted,

CHARLES H. MERILLAT,  
GEORGE R. GAITHER,  
CHARLES J. KAPPLER,

*Attorneys for Appellee.*





STEWART *v.* GRIFFITH, EXECUTOR OF BALL,  
DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF  
COLUMBIA.

No. 145. Argued April 8, 11, 1910.—Decided April 25, 1910.

Where, as in this case, a condition of forfeiture in a contract of sale of real estate declaring it to be null and void in case of failure on the part of the vendee to perform is plainly for the benefit of the vendor, the word void means voidable with election to the vendor to waive or to insist upon the condition.

A contract of purchase and sale of real estate, the tenor of which imports mutual undertakings, held in this case to be an absolute contract and not merely an option to purchase.

In this case a letter from an executor to a purchaser under an uncompleted contract of sale held not to be a waiver of right to compel specific performance.

The party executing a sealed contract for purchase of real estate as principal cannot avoid specific performance on the ground that he executed as agent for another not mentioned in the instrument.

Under the provisions of § 329, Code of the District of Columbia, an executor who can maintain an action for specific performance in the jurisdiction in which the land lies can maintain it in the District if the defendant there resides.

Under the law of Maryland an executor may maintain an action for specific performance of a contract made by his testator, to convey real estate, and the title conveyed by him is good and valid if he satisfies the Orphans' Court that the entire purchase price is paid, and such condition is a condition subsequent.

A provision giving executors full and complete power over the entire estate, real, personal and mixed, held in this case to imply a devise to the executor of real estate under contract of sale and authority

to convey in order to carry out the contract on receiving the balance due.

As against heirs, real estate under contract of sale made by testator may be treated as personalty and conveyed by the executor safe from any collateral attack upon the will.

31 App. D. C. 29, affirmed.

THE facts are stated in the opinion.

*Mr. James E. Padgett* and *Mr. Henry E. Davis* for the appellant:

The appellee has no right to bring or maintain this suit, and the alleged action of the Orphans' Court was without jurisdiction and void; the court had no jurisdiction to pass the order of December 15, 1903, and it is a nullity.

When a court exercises an extraordinary power under a special statute prescribing its course, that course ought to be exactly observed, and jurisdictional facts must appear in order to show that its proceedings are *coram judice*. *Thatcher v. Powell, Lessee*, 6 Wheat. 119; *Thompson v. Whitman*, 18 Wall. 457; *United States v. Walker*, 109 U. S. 258; *Windsor v. McVeigh*, 93 U. S. 274. Orphans' courts have power to take probate of wills but not to adjudicate questions of title dependent upon their operation or effect, or to decide upon the rights of disposition. *Schull v. Murray*, 32 Maryland, 9; *Ramsay v. Welby*, 63 Maryland, 584; *Grant Coal Company v. Clary*, 59 Maryland, 445; *Baltimore v. Hood*, 62 Maryland, 378.

The record does not show any existing contract which can be enforced by specific performance against the appellant, or any contract binding the appellant existing after November 7, 1903. The contract does not provide that either the appellee or appellant shall have the option to consider the contract continuing, and enforce the same after the happening of the contingency, which the contract itself says shall terminate its own existence.

This contract being a Maryland contract, affecting lands in that State, must, of course, be construed and its meaning

217 U. S.

Argument for Appellant.

determined in accordance with the decisions of the courts and the laws of that State.

The primary technical, as well as ordinary, meaning of the words is, without legal effect or force, incapable to bind parties or support a right. 29 Amer. & Eng. Ency. Law (2d ed.), 525. But the contract itself shows that the parties did not intend the result of the happening of the contingency to make the contract merely voidable, because they use not only the term "null and void" but added to it the term "and of no effect in law." See *Pullman Palace Car Co. v. Central Trans. Co.*, 139 U. S. 24; *Cherry v. Stein*, 11 Maryland, 1, as to the terms of avoidance of a contract for the sale of real estate came before the court for determination. The contract begins by saying, "I have this day purchased from C. R. Tate, Administrator," and concludes with "this sale to be null and void in case the whole square, as advertised, shall be sold together, otherwise to remain in full force." The court said: "Such an instrument constitutes a valid and effective sale, subject to become a nullity upon a single contingency." *Hazleton v. Le Duc*, 10 App. D. C. 379, does not support appellee's position, and see *Jones v. Holliday*, 2 App. D. C. 279. When the contingency happened the contract terminated and has since had no existence. But if there should be doubt, the conduct and conversations of the parties and their agents maintain this contention. *Varnum v. Thurston*, 17 Maryland, 471; *Roberts v. Bonaparte*, 73 Maryland, 191; *United States v. Bethlehem Steel Co.*, 205 U. S. 118.

The acts and declarations of agents of the parties in the course of their employment are admissible. *Main v. Aukam*, 12 App. D. C. 375. So that it is quite certain that all the parties understood that if the first payment was not made on November 7, the contract would become void and ended.

To avoid the effect of this ending of the alleged optional right the appellee contends that as he had not then received his letters testamentary his action was without authority and not binding upon him under § 48, Art. 93, of the Maryland

Code, but a contract void by statute cannot be enforced directly or indirectly. It confers no right and creates no obligation as between the parties to it. The party who refuses stands upon the law and has a right to refuse. *Dunphy v. Ryon*, 116 U. S. 491; *May v. Rice*, 101 U. S. 231. The record shows that the heirs of Alfred W. Ball are indispensable parties to this suit. 3 Pom. Eq. Jur., § 129; *Lynn v. Zephart*, 27 Maryland, 547; *Kellar v. Harper*, 64 Maryland, 74.

Where the court appoints a trustee to sell real estate and the trustee sells the property no conversion takes place until the court ratifies the sale and the purchaser pays the purchase money. *Dalrymple v. Taneyhill*, 2 Md. Ch. 125; *Jones v. Plummer*, 20 Maryland, 416. So where the testator directs his real estate to be sold and the proceeds applied to a special purpose, no conversion takes place if the purpose fails. *Rizer v. Perry*, 58 Maryland, 112; 3 Pom. Eq. Jur. 138, 141.

Until the appellant had made his first payment under the contract, or, in the event of his default, until Ball had made his election, assuming that he had the right so to do, to enforce the contract there could be no equitable conversion. 3 Pom. Eq. Jur. 132; 30 Beav. 206; *White's Estate*, 167 Pa. St. 206; *Edward v. West*, 7 Ch. Div. 858; *Smithers v. Loehenstein*, 50 Ohio St. 346.

*Mr. Charles H. Merillat* and *Mr. George R. Gaither*, with whom *Mr. Charles J. Kappler* was on the brief, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity, brought by the executor of one Ball for the specific performance of a contract made by the appellant to purchase certain land. The plaintiff had a decree in the Court of Appeals of the District of Columbia, and the defendant appealed. 31 App. D. C. 29.

The material parts of the contract are as follows: "This agreement, Made by and between L. A. Griffith, duly authorized Agent and Attorney under a certain power of At-

217 U. S.

Opinion of the Court.

torney from Alfred W. Ball both of Prince George's County, Maryland, parties of the first part, and Wm. W. Stewart of Washington D. C. of the second part. Witnesseth that the said W. W. Stewart has paid to the said L. A. Griffith, Agent, the sum of Five Hundred Dollars (\$500) part purchase price of the total sum to be paid for a certain tract of land, owned by the said Alfred W. Ball," in Maryland as described, "same being sold at the rate of \$40 per acre." "And the said L. A. Griffith as the Agent and duly authorized Attorney of said Alfred W. Ball, hereby grants bargains and sells, and agrees to convey by proper deed . . . duly executed by the said Ball to the said Stewart, the said Two Hundred and forty acres of land upon further payments and conditions hereinafter named to wit: The balance of one-half of the purchase price of the said 240 acres, more or less, at the rate of Forty dollars per acre is to be paid to the party of the first part on the 7th day of November 1903, and the remaining one-half of the total purchase price, is to be divided into five equal payments secured by five promissory mortgage notes, secured by purchase money mortgage upon the said property to be given by the said Stewart and Wife," with immaterial details. A burial lot of one acre is reserved "conditioned however that if the said Ball should desire to abandon the said burial tract . . . he shall have paid to him therefor by the said party of the second part the sum of (\$40) Forty Dollars," &c. "The said land is to be surveyed and a plat made thereof, and the total purchase-price is to be at the rate of Forty Dollars per acre as determined by the said Survey the costs of the said Survey is to be borne equally by the said parties of the first part and the second parts; the said L. A. Griffith and W. W. Stewart each to pay one half of the total survey costs. Proper Deed or Deeds of Conveyance and abstracts of title of the said land based upon title search therefor is to be made and by J. K. Roberts . . . showing clear and unencumbered fee simple title, in the said land above mentioned and described, in the said Alfred W. Ball, and one half of the total costs for

same not exceeding \$50, is to be borne equally by the parties hereto. In case the remainder of the first half of the purchase price be not paid on November 7, 1903 then the said \$500 so paid to the said Griffith is to be forfeited and the Contract of sale and conveyance to be null and void, and of no effect in law, otherwise to be and remain in full force." . . . "The possessory right to all of the said premises on the property mentioned herein is to remain in the said Ball, until the one half payment of the total purchase price herein provided for on November 7th, 1903, has been fully paid and satisfied, to the said L. A. Griffith Agent. Witness our hands and seals this 5th day of June 1903. L. A. Griffith. Wm. W. Stewart." With seals.

The first defense is based on this document itself. It is said that the defendant made no covenant and therefore was free to withdraw if he chose to sacrifice the five hundred dollars that he had paid. This contention should be disposed of before we proceed to the other questions in the case. The argument is that the condition of forfeiture just stated and the consequence that the contract is to be void and of no effect in law disclose the only consequences of default on the purchaser's part, much as until well after Lord Coke's time the only consequence of breaking the condition of a bond was an obligation to pay the penalty. The obligor was held to have an election between performing the condition and payment. *Bromage v. Genning*, 1 Roll. R. 368; 1 Inst. 206b; *Hulbert v. Hart*, 1 Vern. 133 (1682). Some circumstances were referred to in aid of this conclusion, but as we think the meaning of the document plain we shall not mention them, except in connection with other matters, further than to say that there is nothing that would change or affect our view.

It seems to have been held within half a century after *Hulbert v. Hart*, that, under some circumstances at least, a bond would be construed to import a promise of the event constituting the condition. *Hobson v. Trevor*, 1 Strange, 533, S. C., 2 P. Wms. 191 (1723). *Anonymous*, Moseley, 37 (1728);

217 U. S.

Opinion of the Court.

*Roper v. Bartholomew*, 12 Price, 797, 811, 822, 826, 832. *Hooker v. Pyncheon*, 8 Gray, 550, 552. But in this case we are not confined to a mere implication of a promise from the penalty. The tenor of the 'agreement' throughout imports mutual undertakings. The \$500 is paid as 'part purchase price of the total sum to be paid,' that is, that the purchaser agrees to pay. The land is described as 'being sold.' There are words of present conveyance inoperative as such but implying a concluded bargain, like the word 'sold' just quoted. So one-half of the purchase price 'is to be' divided and the notes secured by mortgage 'to be given;' and in the case of the burial lot Ball 'shall have paid to him' \$40 if he elects to abandon it. Here is an absolute promise in terms, which it would be unreasonable to make except on the footing of a similar promise as to the main parcel that the purchaser desired to get. We are satisfied that Stewart bound himself to take the land. See *Wilcorson v. Stitt*, 65 California, 596. *Dana v. St. Paul Investment Co.*, 42 Minnesota, 194. The condition plainly is for the benefit of the vendor and hardly less plainly for his benefit alone, except so far as it may have fixed a time when Stewart might have called for performance if he had chosen to do so, which he did not. This being so, the word void means voidable at the vendor's election and the condition may be insisted upon or waived at his choice. *Insurance Co. v. Norton*, 96 U. S. 234. *Oakes v. Manufacturers' Insurance Co.*, 135 Massachusetts, 248, 249. *Titus v. Glen Falls Ins. Co.*, 81 N. Y. 410, 419.

Ball died on November 5 or 6, 1903, just before the date fixed by the contract for the payments (November 7). He left a will appointing Griffith his executor and containing provisions to which we shall refer later. Before probate Griffith wrote to Stewart as follows on November 10:

"I have consulted two lawyers and am satisfied that I am fully authorized and empowered to complete sale of land and give deed. It rests with you. Please let me know positively on or before Monday next (16th) what you intend to do. There is a proposition on hand from other sources and I have under



this will power to act. I will make private arrangements at once for the disposition of it, if you do not take it. If you do not meet the requirements and satisfactory arrangements are not made before Monday, 16th at 12 o'clock please consider the matter ended. I think you entitled to the property and I desire that you shall get it, but I must do for the best interests of the estate, and I will gladly wait for you until Monday, 16th." There is a suggestion in argument not quite unwarranted by the language of this letter, that so far as in Griffith's power he then left the choice to Stewart whether to go on with the bargain or not. But apart from Griffith's lack of authority to change rights at that time, we are satisfied that the true import of the letter was politely to apply a spur to Stewart on the assumption that he had a bargain that he would not want to let go. The land was supposed to contain oil.

The stipulations in the contract were performed on the part of the vendor, and it now may be assumed that Stewart's obligation is outstanding, although repudiated by him, and that the only question is whether it can be enforced by Griffith in this action. To be sure, there was some attempt on Stewart's part, earlier, to say that he merely represented an oil company, and that the company alone was bound; but this properly was abandoned at the argument—Stewart's name is the only one appearing in the instrument, and he signed and sealed it, so that no such escape is open. *Glenn v. Allison*, 58 Maryland 527; *M'Ardle v. Irish Iodine & Marine Salts Manf. Co.*, 15 Ir. C. L. 146, 153.

Coming, then, to the question that remains, it is to be noticed as a preliminary that if Ball's executor could have maintained this suit in Maryland, where the land lies, he can maintain it here, where the defendant resides. Code, D. C., § 329. Some technical objections were raised before us as to the proof of the probate proceedings, but it sufficiently appears that Ball's will was proved and that the plaintiff qualified as executor under the same.

By the Maryland code an executor may prosecute any personal action whatever, whether at law or in equity, that the testator might have prosecuted, except an action for slander. Code of 1888, Art. 93, § 104. And by § 81 of the same article the executor of a person who shall have made sale of real estate, and has died before receiving the purchase money or conveying the same, may convey said real estate to the purchaser, and his deed shall be good and valid in law, and shall convey all the right, title, claim and interest of such deceased person in such real estate as effectually as the deed of the party so dying would have conveyed the same; provided, the executor of the person so dying shall satisfy the Orphans' Court granting him administration that the purchaser has paid the full amount of the purchase money. These seem sufficient to make out the plaintiff's case, if there were nothing more. The proviso in the Maryland statute obviously must create a condition subsequent only, as it is not to be supposed that a purchaser would pay unless he got what he paid for at the same time. In substance, the code points out the executor as the proper person to enforce the contract, gives him a right of action to that end and empowers him to make the deed. We do not perceive how a conveyance could be questioned, if made by an executor upon a contemporaneous payment of the price, in pursuance of a binding contract of his testator, even without obtaining antecedent authority from the Orphans' Court. Therefore we do not perceive why the executor is not entitled to require specific performance if he is ready to deliver a deed at the moment of receiving the price. In this case the executor obtained an order from the Orphans' Court, purporting to authorize him to complete the sale, as if it had been an application for leave to sell under § 276. This seems to us to have been superfluous, but it did no harm, and it does not narrow the plaintiff's right to recover, by being set out as one of the foundations of the bill.

Next, apart from statute, it would be going far in search of possible doubts to say that sufficient authority could not be

derived from the will. The language is, "I direct, authorize and empower" the executor "to have full and complete power and authority over my entire estate, real, personal and mixed," and it directs and empowers him to sell the testator's real estate at public sale, after one month's notice, upon such terms as he thinks proper. We are not inclined to disagree with the Court of Appeals in its opinion that the words taken with the whole will imply a devise of the legal title to his executor and an authority sufficient to warrant his carrying out the sale. It is urged that the probate of the will does not establish it conclusively as to real estate, and that the heirs might attack it hereafter, but it is answered that by the contract the land had become personalty as against them, and that therefore so far as this land is concerned the will is safe from collateral attack. Moreover, as it is clear that the estate has and is subject to a binding contract, it is hard to see how it matters to the heirs who does the formal acts of accomplishment so long as he is accountable to the Orphans' Court.

No question was raised on either side as to the covenants of Stewart being enforceable only by Griffith personally, because the agreement was under seal, and Griffith alone was party to it. *Berkeley v. Hardy*, 5 B. & C. 355; *Frontin v. Small*, 2 *Ld. Raym.* 1418, 1419. It is enough to say that Stewart could not have profited by the suggestion had it been made.

*Decree affirmed.*

MR. JUSTICE HARLAN concurs in the result.